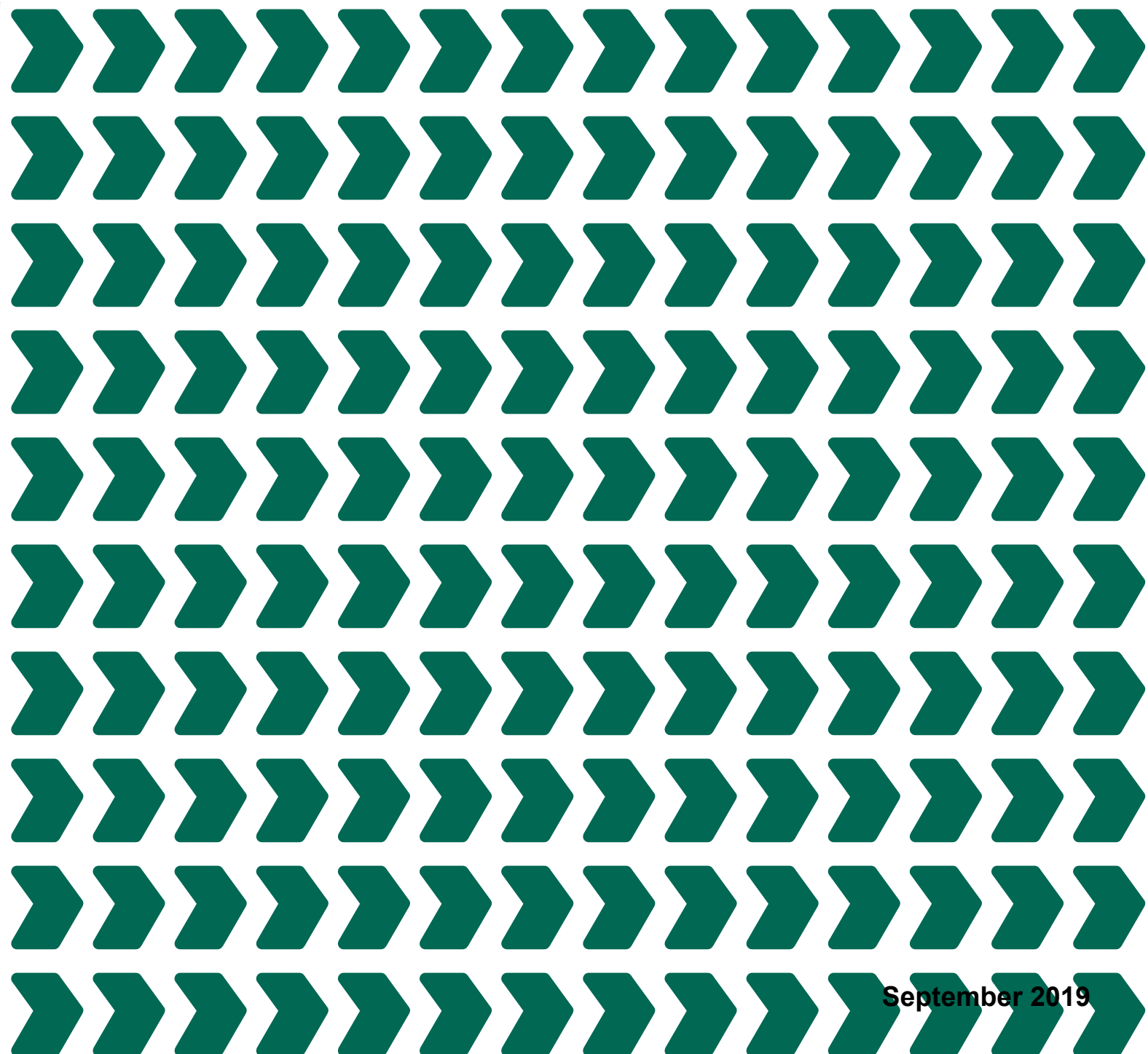




Department
for Transport

The Bus Services Act 2017

Guidance on the Registration of local bus services in an Enhanced Partnership Area



September 2019

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Contents

1. Introduction	4
Who should read this guidance?	4
What is this guidance for?	4
2. Detailed Guidance	6
3. Traffic Commissioner remains the registration authority after EP introduced	7
Enforcement powers	8
Traffic Commissioner Discretion	8
4. The LTA takes over the registration function from the traffic commissioner: either when the scheme is first made or during the life of the scheme	9
5. Route requirements	15
6. Conduct of the LTA when acting as registration authority	19
7. Appeal arrangements	21
Annexes	26
Annex A - Notice when an EP scheme is made or varied	26
Annex B - Notice when an EP scheme is postponed or revoked	27
Annex C - Notification to operators when LTA takes over registration	27
Annex D - LTA fees	28
Annex E - Recording and publication of information	28
Annex F - Cancelling registrations	29
Annex G - Breaching a route requirement	32
Annex H - Tendering arrangements for LTA contracts	36
Annex I - Notification of intention to cancel	39

1. Introduction

Who should read this guidance?

1.1 This document is only of interest to:

- Local Transport Authorities (LTAs) that are considering, or are required, to take on the local bus service registration function from the traffic commissioner as part of an Enhanced Partnership (EP) under powers in the Bus Services Act 2017 (the 2017 Act)¹.
- Operators of local bus services who are running local bus services that would be affected by the registration authority changing from the traffic commissioner to the LTA.

What is this guidance for?

1.2. The Bus Services Act 2017 ('the 2017 Act') includes two types of statutory partnership agreement that can be made between LTAs and local bus operators:

- An Advanced Quality Partnership
- An Enhanced Partnership

Details on the difference between these two regimes is contained in The Bus Services Act 2017 New powers and opportunities – which can be downloaded here:

<https://www.gov.uk/government/publications/bus-services-act-2017-new-powers-and-opportunities>

Detailed guidance on the Advanced Quality Partnership regime can be found here:

<https://www.gov.uk/government/publications/bus-services-act-2017-advanced-quality-partnership-creation>

Detailed guidance on the Enhanced Partnership regimes can be found here:

<https://www.gov.uk/government/publications/bus-services-act-2017-enhanced-partnership-creation>

1.3. Under the Transport Act 1985, local bus services are required to be registered with the traffic commissioner. The bus operator must provide the traffic commissioner with 'particulars' of the service, including the route and timetable. Once the service is registered, the bus operator must run the service in accordance with the registered particulars – or face enforcement action by the traffic commissioner. Under an EP, the requirements of the scheme – either area-based requirements, such as a smart ticketing scheme, or route-based requirements such as a maximum frequency of service on an individual bus route – are included as requirements of registration. If an

¹ The 2017 Act inserts the relevant provisions into the Transport Act 2000 – see below.

operator wishes to register a local bus service on a route that is subject to an area or route-based requirement, they must comply with those requirements for as long as the service remains registered or those requirements in the EP exist. Failure to do so can result in enforcement action by the traffic commissioner.

1.4. However, the 2017 Act² amends the Transport Act 1985 to allow the registration function currently undertaken by the traffic commissioner to pass to the LTA as part of an EP. This can happen in two ways:

- The LTA (or 'lead' LTA if an EP covers the geographical area of more than one LTA³) can decide itself to take on the registration function from the traffic commissioner;
- If the EP includes a route requirement⁴ (even just one) that applies wholly within the geographical area of the EP, the 2017 Act requires the LTA to take on the registration function from the traffic commissioner when that route requirement(s) first apply – either if it is included when the scheme is first made, or if it is later varied to include a route requirement.

1.5. However, both of those only apply to registered services whose route operates wholly within the geographical area of the EP. Bus services crossing that geographical boundary always remain registered with the traffic commissioner.

1.6. This guidance and the accompanying regulations - The Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England) Regulations 2019 ('the 2019 Regulations') set out the practical steps that LTAs, bus operators and the traffic commissioner will need to go through in order for the registration powers to pass from the traffic commissioner to an LTA. It also sets out special arrangements that must apply when a local bus operator cannot, or refuses, to meet those requirements.

1.7. The rules that govern how the registration system works are in the Public Service Vehicles (Registration of Local Services) Regulations 1986 ('the 1986 Regulations' - SI 1986/1671)⁵. However, please bear in mind that these regulations have been considerably altered over time by subsequent amending regulations.

1.8. Guidance for making an EP scheme is set out in the main EP guidance document.

² Section 14 of the 2017 Act/ section 6G of the Transport Act 1985

³ See section 4 below

⁴ See section 5 below

⁵ The original regulations can be downloaded at: <https://www.legislation.gov.uk/ukSI/1986/1671/made>

2. Detailed Guidance

2.1 This document includes two different types of guidance non-statutory guidance and statutory guidance:

- Informal guidance which seeks to explain how the new provisions introduced through the 2017 Act work in practice and offer some practical suggestions as to their application. This informal guidance is shown in normal type font in this document. It has no formal legal status and there is no statutory requirement for a local authority to have regard to it. It may however reference legislative requirements (such as requirements to follow a particular process or to consult); and
- Statutory guidance to which a local authority must have regard in exercising relevant functions. Statutory guidance is shown in underlined font in this document. It is issued under section 138R(1) of the Transport Act 2000 (as inserted by the 2017 Act). However, also bear in mind that much of this guidance seeks to explain the 2019 Regulations, so text that is not underlined may also have a statutory basis. This means that any underlined text is statutory guidance on non-legislative requirements.

2.2 The EP legislation was inserted into the Transport Act 2000 ('the 2000 Act') and the Transport Act 1985 ('the 1985 Act') by the 2017 Act. So, for example, section 9 of the 2017 Act inserted sections 138A-138S into the 2000 Act. For ease of understanding, we provide references, where applicable, to all three Acts in this guidance.

3. The Traffic Commissioner remains the registration authority after an EP scheme is first introduced

3.1. The 2017 Act amends the 2000 Act to require the LTA to notify the traffic commissioner when an EP scheme is introduced (legal term: 'made'), varied, postponed or cancelled. The minimum content of the notification that the LTA must send to the traffic commissioner to make or vary a scheme is at **Annex A** and suggested minimum content for postponement or revocation is at **Annex B**⁶. The LTA must also inform the traffic commissioner whether they wish, or are required, to take over the registration function when the scheme is made - this is covered by Section 4 of this guidance.

3.2. The main aim of these notifications is to give the traffic commissioner full information on the content of the EP scheme. So this notification should also include a list of all the bus service registrations that will be required to meet the requirements of the scheme. LTAs can use powers in the Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017 (SI 2017/1091) to require all operators running services in the EP area to provide registration information before the EP is introduced. The information you ask operators for can comprise all the particulars of registration held by the traffic commissioner for each registration (including the unique registration serial number that is used to identify individual registrations).

3.3. If the traffic commissioner is to remain the registration authority after a scheme is made or varied, a condition of registration will be that after the scheme is made or varied, all affected registrations (whether existing registrations or new future applications) will need to meet:

- Any area-wide requirements⁷, such as compliance with a smart⁷ or multi-operator ticketing regime throughout a defined geographical area; or
- Any route requirements, such as a maximum frequency of buses along an individual route - but only where that requirement applies to a registration crossing the geographical boundary of the scheme. As stated above, if there is a route requirement that applies to a bus service that operates wholly within the geographical boundary of the scheme, the LTA **must** become the registration authority for **all** the bus services that operate wholly within the scheme. In this case, only cross-boundary registrations remain with the traffic commissioner.

3.4 The other requirements of registration, such as the flexibility and rules on short notice applications and the ability to register flexible services, also apply to services registered within or operating across the boundary of an EP scheme. The current

⁶ These are for guidance only and not statutory requirements because they are not included in the 2019 regulations.

⁷ Section 6D of the Transport Act 1985/ Section 11 of the 2017 Act

guidance to operators on the local bus service registration scheme - Operating registered local bus services in England (except London) and Wales: Guide for Operators (PSV 353A) can be downloaded here:

<https://www.gov.uk/government/publications/local-psv-service-registrations-psv353a>.

Enforcement powers

3.5 Under the 2017 Act⁸, the traffic commissioner must refuse an application to register or vary a local service that, in their opinion, does not meet, or would not meet, an area-wide requirement. They can also refuse to accept an application that does not meet a route requirement for the same reasons – providing this does not result in an ‘exclusive right’ for the existing operators on the route, in which case special arrangements apply (see section 5 below). If the traffic commissioner remains the registration authority, they retain all the enforcement powers that are available to them in a deregulated environment.

3.6 However, for a service operating wholly within, or the part of a cross-boundary service within an EP area, they also have the power to cancel⁹ individual registrations for non-compliance – e.g. because an operator is not complying with an area-wide and/or a route requirement.

3.7 This is new and exclusive to the EP scheme. In deregulated areas, traffic commissioners take enforcement action via s.26 of the Transport Act 1985 (see main enhanced partnership guidance for more details).

Traffic Commissioner Discretion

3.8. Whilst the registration Regulations and this guidance include deadlines for the traffic commissioner to provide information or reach decisions, the regulations contain provisions allowing the traffic commissioner to substitute different deadlines at their discretion – e.g. if they consider that a hearing is required. Where those provisions apply, they are explained elsewhere in this guidance.

⁸ Section 6E of the 2000 Act/ Section 12 of the 2017 Act

⁹ This power of cancellation only applies to the part of the route within the EP area. Only the existing enforcement powers apply to the part of the route that is outside the EP area.

4. The LTA takes over the registration function from the traffic commissioner: either when the scheme is first made or during the life of the scheme

4.1. As stated in paragraph 1.4 above, the LTA can take over the registration function in two ways:

It can voluntarily decide to do so

4.2. This might be because the LTA wishes to move the registration function in house so that they have a closer understanding of what local bus services operate in their area. Or they can decide that they wish to undertake the enforcement of the EP registration requirements themselves (enforcement is covered more fully in paragraph 4.20 below). Under these circumstances, there is no time period within which an LTA may take over the registration function. It can do so at any time that an EP scheme remains in force.

It is required to take over the registration function if, when a scheme is made or varied, it includes a route requirement that applies wholly within the geographical area of the EP.

4.3. For these purposes 'wholly within' means that the requirement applies on a bus corridor that is completely within the geographical boundary of the scheme. For example, this could apply to a high street that is at the centre of an EP scheme where the start and finish points of the route restriction are within the scheme's geographical boundary. It is for individual schemes to specify how the restriction applies – e.g. between 9am-6pm on a weekday. However, if any route restriction applies, no matter how short a duration, and the restriction applies on a bus corridor wholly within the EP scheme area, the registration function must still be taken over by the LTA.

Note: in both cases, if an LTA decides or is required to take on the registration function, they must do so for the remaining life of the scheme. An LTA cannot decide, at a later date within the life of an EP, to return the registration function to the traffic commissioner. The LTA also only has powers to register, vary and cancel (either at the operator's request or as an enforcement measure) registrations. Unlike the traffic commissioner, they have no power to hold public inquiries or take action against the operator's licence.

4.4. Managing the transition will require close working between the LTA, bus operators and the Office of the Traffic Commissioners to ensure that the timescales involved result in a smooth transition. This process should not disrupt services to passengers.

What happens if the LTA becomes the registration authority and the EP covers more than one local authority area?

4.5. When deciding to establish an EP, the LTA is required to consider whether to introduce a joint-scheme with other LTA areas. This may be sensible as bus passengers and the journeys they make do not respect LTA boundaries and it may also simplify things if there are issues around cross-boundary services. Under these circumstances, one of the LTAs must be designated the 'lead LTA' – see section 6G(3) of the 1985 Act as inserted by section 14 of the 2017 Act. This is to ensure that operators and the traffic commissioners deal only with one registration authority in each EP. Once the lead LTA is designated, they become the registration authority for all the EP area. However, they are only the registration authority for services operating wholly within the geographical area of the EP. Cross-boundary services running out of the EP area are still registered with the traffic commissioner.

Note: where two or more separate LTAs are considering introducing separate EP Plans/schemes that are in close geographical proximity, they may wish to consider amalgamating them into one EP plan/scheme. This would allow the 'lead LTA' to take over the registration function for all the LTA areas and may avoid the added complexity of cross-boundary services needing to be registered with the traffic commissioner.

Notifying operators and the traffic commissioner

4.6. The first step is to notify the traffic commissioner and the bus operators that the registration function for some services will be passing to the LTA. If this is to take place when the scheme is first made, then the notification to the traffic commissioner also needs to include details of any cross-boundary services which will need to comply with the requirements of the EP – using the arrangements set out in **Annex A** of this guidance.

4.7. At the same time, the LTA will also need to inform bus operators. Where the notification takes place when the scheme is made, the LTA must inform all existing operators of local bus services that operate within or into the EP area within 28 days of the registration function being delegated to the LTA by the traffic commissioner. The minimum information to be included in this notification is at **Annex C**.

4.8. Where the LTA is taking over the registration function at some time after the scheme is made, they must inform all existing operators that, from a prescribed date, applications to register, vary or cancel services must be made to the LTA for services operating wholly within the EP area. Again, **Annex C** and the 28 day notice period applies.

What operators need to do when an EP scheme is made

4.9 If an LTA decides to introduce an EP scheme, they must first inform all operators that are currently operating local services about when the scheme will start and what its requirements are. Further guidance on this process can be found in the main guidance on Enhanced Partnerships.

How do I apply to register, vary or cancel services if the LTA is the registration authority?

4.10 Applying to register, vary or cancel a local bus service uses the same processes as an application to the traffic commissioner because the legal requirements are the same¹⁰. Operators must fill in an application form and supply the necessary

¹⁰ Set out in the 1986 Registration Regulations and covered in the registration guidance mentioned in paragraph 3.4 above.

particulars – for consistency and to avoid confusion for operators, individual LTAs should base their application forms to apply, vary and cancel services on those currently used by the traffic commissioner¹¹. As with the traffic commissioner, the LTA can only accept a registration application if it has all reasonable information needed to process the application. The periods of notice and information requirements are the same as for the traffic commissioner and the LTA can also grant short notice applications using the same rules. The LTA can also register flexible services and is required to publish applications along similar lines to the traffic commissioner's Notices and Proceedings¹².

4.11 As with applications to the traffic commissioner, a registered service can be varied without variation of the registration in the following cases:

- (a) where the registration is varied only to enable the operator of the service to comply with a traffic regulation condition or any other provision prohibiting or restricting the use of any road by vehicular traffic;
- (b) where the registration is varied only in respect of a change in the operator's address;
- (c) where the service is a bus substitution service;
- (d) where an application is made for registration of a service which also crosses the London boundary and that part of the service requires a London service permit and:
 - an application for a London service permit is made at the same time; and
 - the service to be registered will not commence before the grant of the permit.

4.12 If your service crosses over the Greater London boundary you need to register the part that operates outside London with the registration authority and for the part that operates within London you need to contact Transport for London.

4.13 When accepting a registration application, the LTA must inform the applicant within 14 days and inform any other local authority that may be affected by it. The traffic commissioner can request to see all applications made to the LTA.

What about excursions and tours?

4.14 These must be registered if they fall within the definition of a local bus service. Further guidance is available in PSV 353A.

Fees

4.15 If the traffic commissioner remains the registration authority, they will charge the same registration fees as for a service registered in a deregulated area. If the LTA becomes the registration authority they can also charge a fee for the registration, variation and cancellation of a local service. The rules on how the LTA calculates this fee is at **Annex D**.

Keeping records and publication of registration information

4.16. If the LTA is the registration authority it must, as a first step, ask the Office of the Traffic Commissioners for a serial number sequence to use on the registrations it issues. This is to avoid the registration system becoming a confusing hotchpotch of different numbering systems and to ensure compatibility with the traffic commissioner systems when those registrations return to them if an EP scheme ends. The LTA must also keep a record of all the prescribed particulars of all services registered with

¹¹ They can be found at: <https://www.gov.uk/government/collections/local-bus-service-registration-forms>

¹² They can be found at: <https://www.gov.uk/government/collections/traffic-commissioner-notices-and-proceedings>

them and of all variations and cancellations. In addition, at least every two weeks, the LTA must also publish details of their applications, cancellations and variations. It is for individual LTAs to decide how to meet this requirement – but it must include publication on an LTA website and a facility either for interested parties to request copies (it is for the LTA to decide whether to charge for this) or for the data to be made available for inspection (free of charge).

4.17 If the LTA is the registration authority, they should keep and publish the same records of each registration as currently held by the traffic commissioner. These requirements are at **Annex E**. To avoid confusion to operators, publication of this information should, where possible, coincide with the traffic commissioner's publication dates.

What enforcement measures are available to the LTA if it becomes the registration authority?

4.18 If an LTA takes over the registration function, they only have the power to:

- Grant applications for new services and variations or cancellations to existing ones – provided the application contains all the particulars of the service and complies with any requirements set out in an EP scheme. If not, the application for a new service or a variation can be refused.
- Cancel services that are not complying with any EP requirements – this is because the service is not meeting one or more of the requirements set out in an EP scheme. Of course, cancellation should be the last resort for the local authority and we would expect them to discuss the issues with the operator and give them a chance to respond before considering this step.
- Cancel a registration if they believe that a service is no longer being provided - This is the same power as can currently be exercised by the traffic commissioner.

4.19 If the LTA has sufficient evidence that wider enforcement action should be taken against an individual operator – e.g. because there has been widespread failure to meet registration requirements – they can pass the case onto the traffic commissioner, who can consider using their wider powers to put conditions on the operator's licence or use the measures under s.155 of the Transport Act 1985. This means that the overall enforcement powers in an EP area are the same as for a deregulated one.

How are registrations of services cancelled for non-compliance with an area-wide requirement?

4.20 This mechanism depends on whether the traffic commissioner or the LTA is the registration authority. A step-by-step guide is at **Annex F**.

How should LTAs communicate with their local bus operators when acting as the registration authority?

4.21 This communication falls into three categories:

Communication with operators when the LTA plans to take over the registration function

4.22 This can happen when a scheme is made or at any time during its life. **Annex C** already sets out the minimum requirements on what the notice to operators should contain. As part of this process, the LTA will also need to let operators know how they plan to process applications to register, vary and change existing local services. This should include information on where to obtain the necessary application forms

and where to send them once completed. The LTA must ensure that the change from using the traffic commissioner forms and processes is as seamless and possible and the LTA should discuss the transfer well in advance with the Office of the Traffic Commissioners. As said previously, LTAs should also consider using OTC forms and processes as a template for their own.

Communication with operators when acting as the registration authority

4.23 This communication has several forms. The processing of application forms is a routine process where the LTA is free to adopt similar processes as the Office of the Traffic Commissioners. There will also be communication with operators that have, for whatever reason, failed to meet the requirements of the EP scheme. It is for the LTA itself, seeking appropriate legal advice, to determine how to deal with cases where a local service does not meet the requirements of registration. The Senior Traffic Commissioner has published statutory directions guidance¹³ on among other things decision making and local bus service registration. Whilst these documents apply only to the traffic commissioners themselves, LTAs may also find them useful when determining how to exercise their own statutory powers as a registration authority.

Communication when the LTA is no longer to be the registration authority

4.24 **Annex B** already contains suggested requirements on the content of a notice from the LTA to the traffic commissioner when a scheme is revoked or postponed. LTAs should use this as the template for informing operators.

Transition from an EP scheme back to a 'fully' deregulated environment

4.25 If the traffic commissioner is the registration authority, then the requirements of the EP rules and requirements will simply cease to apply when the EP scheme is revoked or expires. The other circumstance where that happens is where a particular requirement(s) in an EP scheme expires after a certain date, but the EP scheme itself continues.

4.26 Where the LTA is the registration authority, the power to take over the registration function no longer applies once the EP scheme has come to an end. In this case, the registration function passes back to the traffic commissioner.

4.27 As a first step, the LTA should make early contact with the Office of the Traffic Commissioners at least 6 months in advance of an EP scheme coming to an end. The LTA should follow similar processes and arrangements as for introducing an EP, just in reverse. Whilst regulations do not specify what those arrangements are, a notice to the traffic commissioner along the lines of the one specified in **Annex A** may be helpful as a basis for formally notifying the traffic commissioner. The principle aim should be to ensure that the traffic commissioner has full data on the registrations that are held by the LTA so that those registrations can pass seamlessly to the traffic commissioner, without requiring the operator to re-register the affected services.

¹³ <https://www.gov.uk/government/collections/senior-traffic-commissioners-statutory-guidance-and-statutory-directions>

LTA Discretion

4.28 As with the traffic commissioner, whilst the Registration Regulations and this guidance includes deadlines for the LTA to do particular things, the regulations also contain some provision allowing the LTA to substitute different deadlines at their discretion. Where they apply, they are explained elsewhere in this guidance.

5. Route requirements

5.1 An EP scheme can stipulate service standards that apply on individual bus corridors or parts of them. For example, it can require that only, say, six buses an hour can operate in either direction along the High Street between 9am – 6pm on weekdays. It can also require the buses on that route to operate at even headways (gaps between individual buses) or that services must arrive at stops at a particular time (e.g. to co-ordinate with a rail service). Where such requirements apply, operators are required to run their services in accordance with those requirements as a condition of registration. Failure to do so can attract enforcement action.

How route requirements apply when they are first introduced

5.2 Route requirements can apply when an EP scheme is first introduced or at any point during the life of the scheme. For example, a scheme may be introduced on, say, 1 June, but the scheme itself can stipulate that its route requirements apply from, say, 1 November or only between, say 1 November and 1 April each year. Or a route requirement can be introduced when a scheme is varied. Whatever the arrangements, it is vital that operators wishing to continue to operate existing services on a route subject to those requirements do, where necessary, vary the registration to comply with any route requirements. Failure to do so can result in enforcement action including the service registration being cancelled. Of course, it is entirely possible that the requirements on a particular route simply reflect current operation. In this case, nothing needs to happen. The operators can continue to operate under their existing registrations.

5.3 However, where changes to registrations are required, operators must submit an application to the registration authority within existing deadlines – see the PSV 353A for more details. Operators can submit short notice applications as well, under the normal rules that apply in a deregulated area.

What happens if operators running existing services cannot comply with a route requirement?

5.4 It is hoped that operators would have raised any concerns about scheme requirements during the development of the EP itself. However, if an operator(s) cannot, for some reason, meet a route requirement, either when it is introduced or during the life of the scheme, they can request the partnership to vary the EP scheme – individual schemes can also contain bespoke arrangements for how they are varied which, if they exist, would apply (see main EP guidance for further details) that could take account of this scenario. However, in the absence of this, the scheme would need to meet the arrangements for varying it as set out in the main EP guidance document, including the operator objection mechanism. In the absence of any of these options, operators not meeting route requirements can face having individual registrations cancelled by the registration authority.

What happens if an operator wishes to operate a service on a route subject to a frequency requirement?

5.5 Where a frequency requirement applies, all operators running services on that route must **at all times** comply with its requirements. In the absence of the options outlined in the above paragraph, and if an operator then still submits an application that would breach a frequency requirement, the following arrangements apply.

5.6 Under EU procurement law¹⁴, any arrangements for providing a local bus service that confer an 'exclusive right' on a bus operator or group of bus operators, require that service to be subject to competitive tender. This can be explained using the following scenario:

An EP scheme stipulates a route requirement that no more than six buses an hour can operate in either direction along the high street between 9am-6pm on weekdays. Currently, there are two operators that are providing services that fully meet that requirement – **operator A** is providing four buses an hour, and **operator B** is providing two. However, **operator C** decides that it also wishes to operate buses along this route and submits an application to the registration authority to run a further two buses an hour. If the registration authority were to refuse their registration, this would immediately create an 'exclusive right' for operators A and B under EU law. In this case, that EU law requires that the provision of the bus service on the high street should be provided by competitive tender from the moment operator C's application is refused – because this is the moment that the 'exclusive right' is created.

5.7 Clearly, we would not wish passengers to experience disruption to bus services as a result of this requirement. We also wish to allow operators A and B to be able to positively respond to operator C's application without automatically triggering a tendering exercise. Further guidance on the procedures, when an operator (either a new or existing one) submits an application to register or vary a service that would breach a route requirement are at **Annex G**.

Clearly, the cancellation of commercial services and their replacement by a tendered one can cause some disruption and confusion for passengers. It would also deprive the existing operators of a commercial market. However, this is unavoidable if the operators running or seeking to run services on the route concerned cannot reach a voluntary agreement that would keep the overall service provision within the route requirement. **In the absence of a voluntary agreement, those commercial services will have their registrations cancelled and be replaced by a service(s) tendered by the LTA. Once a contract has been let by the LTA any applications by operators to run additional services on that route will be refused by the registration authority until the contract (set at 5 years) or the EP scheme expires - whichever is the earlier.**

Are there any rules about how the LTA procures service(s) on a route where the commercial services are cancelled because of a failure to meet a route requirement?

5.8 Yes. The contract that is awarded to replace a commercial service(s) that has been cancelled as a result of a failure to meet a route requirement must meet the requirements at **Annex H**.

¹⁴ EU Regulation No. 1370/2007 on public passenger transport services by rail and by road.

Transitional arrangements

5.9 It is important that when introducing an enhanced partnership scheme or devolving the registration function from the traffic commissioner, that the LTA and the traffic commissioner co-operate¹⁵. It is also important that enough time is built into the various stages by the LTA to enable the required registration processes to be carried out. Below are some examples (although not all) of where this co-operation and transitional time periods should apply.

When an EP is introduced

5.10 In this case, it will be necessary:

- If the traffic commissioner remains the registration authority - for them to be given enough time to obtain any necessary undertakings from operators that they will comply with the area-wide and cross-boundary route requirements that apply to individual registrations. Under these circumstances, the traffic commissioner will need details of the registration particulars for those affected services in good time to obtain any necessary assurances from operators before the EP requirements apply to them. It is for the LTA and the Office of the Traffic Commissioners to decide between them who should obtain this information - remembering that the LTA has powers to request registration information from operators. This may require the implementation date of those requirements to take that process into account.
- If the LTA takes on the registration function – this can happen either when the EP is first introduced or at any time afterwards. In either case, it is essential for the traffic commissioner and the affected operators to be informed by the LTA of their intention to become the registration authority and for the registrations that will pass to them to be identified in good time before the delegation takes place. It is also essential that the LTA can meet all the legal requirements and timescales that apply when acting as the registration authority.

Note: It is not necessary for operators to re-register services because the registration authority has changed. Responsibility for those registrations will simply pass from the traffic commissioner to the LTA.

5.11 As it is for the traffic commissioner and individual LTAs to agree these timescales in advance (taking into account any statutory timescales), all parties must be clear about what the arrangements are and particularly that affected operators know how the transitional arrangements will operate and to whom and from when to submit applications for new, varied or cancelled services. It is also important that LTAs establish early contact with the Office of the Traffic Commissioners during the development of an EP so that they can ensure that they can put in place the appropriate resources to deal with the administrative workload at the appropriate time.

Where a route requirement cannot be met

5.12 Given the steps that must occur if a route requirement is not met or potentially not met, good communication between the traffic commissioner, the LTA and the affected operators is also essential, especially if an application from a new operator is submitted during the processes outlined in **Annex G**.

¹⁵ See Regulation 18 of the 2019 Regulations

Powers of the registration authority to refuse applications

5.13 The registration authority can refuse applications to register or vary services subject to a route requirement if they believe the operator is unlikely to be able to comply with the route requirement. This could be, for example, because the timetable would require the vehicle to break a speed limit on the road, or the registration authority has concerns about the operator's competence to run the service as registered.

Note: the registration authority cannot refuse an application just because it would breach the route requirement. For example, if a route requirement limited the frequency of service to 6 buses an hour, the registration authority cannot refuse it simply because it would result in a seventh vehicle operating - this would create an 'exclusive right' for the existing operators, in which case, the arrangements in **Annex G** should be followed.

6. Conduct of the LTA as registration authority

6.1 It is very important that the LTA should act reasonably as the registration authority. As far as the operator is concerned, they should receive the same treatment whether the registration function is carried out by the traffic commissioner or an LTA.

6.2 It is important that the LTA should be as open as possible and that they have effective arrangements for communicating with operators - some of which are subject to statutory time periods. For example:

(a) properly completed registration applications should be acknowledged promptly and where the required documentation is incomplete, the operator should be informed, with a request to supply any additional information or further documentation, so that the application can be processed as quickly as possible.

(b) LTAs should allow operators to communicate with them and submit information electronically. LTAs should also seek to resolve any application issues by email or by phone if possible and not rely solely on the post.

Further guidance from the Office of the Traffic Commissioners on the detailed operation of the registration system is available here:

<https://www.gov.uk/government/publications/local-psv-service-registrations-psv353a>

Note that this guidance applies to traffic commissioner functions - only some of which will apply when the LTA is acting as the registration authority.

6.2 Where the LTAs receive evidence of non-compliance with a registration requirement, this should be drawn to the attention of the operator. The operator should then be given an opportunity to explain what has happened and, where applicable, how they intend to put things right. Most LTAs will already have experience of similar procedures when managing contracted local bus services, including arrangements for addressing poor performance.

Note: The LTA only has powers to take decisions on whether to accept, vary or cancel individual registrations. They have no powers to take action under the operator licensing system or to hold public inquiries. Any evidence that the LTA obtains that relates to issues such as vehicle maintenance or that would affect the financial viability or good repute of the operator (e.g. conduct of staff) should be passed on immediately to the Office of the Traffic Commissioners.

7. Appeal arrangements

7.1 Operators that are unhappy with a decision by the registration authority to refuse an application to register or vary a service, or to cancel an existing registration for non-compliance, have a right of appeal. However, the rules are different depending on whether the traffic commissioner or the LTA is the registration authority that took the decision.

Traffic Commissioner is the registration authority

7.2 In this case, the operator would appeal to the Administrative Appeals Chamber of the Upper Tribunal as is currently the case. Further guidance on this mechanism is set out in PSV 353A.

LTA is the registration authority

7.3 In these circumstances, an appeal should be made to the traffic commissioner in the first instance. Detailed processes are outlined below.

Starting an appeal

7.4 A notice of appeal must be sent to the traffic commissioner so that it is received within 28 days of the date of the decision being appealed. It must include:

- The name and address of the appellant (and their representative, if any);
- The operator's licence number if known;
- An address (or electronic address) where documents for the appellant may be sent or delivered;
- The name and address of the respondent;
- Details of the decision under appeal;
- The decision the appellant is seeking;
- The grounds on which the appellant relies.

7.5 The appellant must also provide any written record of the decision being appealed, and if available, any statement giving reasons for the decision.

7.6 Where the notice of appeal is sent so that it arrives after the 28 day period, the appellant must request an extension and give reasons for not providing the notice in time. It is then for the traffic commissioner to decide whether to admit the notice and grant the additional time.

7.7 Where an action is required on a specific day, it must be done by 5pm. Where the specified time period ends on a public holiday, Saturday or Sunday, then the time period is regarded as ending on the next working day. Documents provided to the traffic commissioner can be sent by post, by hand or electronically.

Replying to an appeal

7.8 The respondent (i.e. the person whose decision is being appealed) must send a response notice to the traffic commissioner so that it is received within 28 days of the date on which the commissioner sent the notice of appeal. It must include:

- the name and address of the respondent (and their representative, if any)
- an address (or electronic address) where documents for the respondent may be sent or delivered;
- a statement setting out whether the respondent opposes the appellant's case, and if so, any grounds for doing so.

7.9 Where the appellant has not supplied a written record of the decision under appeal, and a statement of reasons for the decision, with the notice of appeal - for instance, if they were not supplied with them for whatever reason – the respondent must supply them with their response notice, if they have them or can reasonably obtain them.

7.10 Where the response notice is sent so that it arrives after 28 days, the respondent must request an extension and explain why they did not provide the notice within the required timeframe. Extending the time allowed for, and deciding whether to admit the notice is entirely at the discretion of the traffic commissioner.

7.11 The traffic commissioner will send a copy of the response notice and any accompanying documents to the appellant, unless they have refused to admit the response.

7.12 Following the response notice, the appellant may make a written submission and provide further documents in reply, which must be sent to the traffic commissioner within 14 days of the date on which the commissioner sent the response notice to the appellant. Where the reply is sent so that it arrives after 14 days, or another timescale specified by the traffic commissioner, the reply must request an extension and explain why it was not provided within the required timeframe. Again, extending the time allowed for the reply, and deciding whether to admit it, is entirely at the discretion of the traffic commissioner.

The traffic commissioner will send a copy of the reply and any accompanying documents to the respondent, unless they have refused to admit the reply.

Hearing an appeal

7.13 The traffic commissioner will hold a hearing before determining an appeal, except where it has been agreed with the appellant and respondent that it can be determined without one.

7.14 Where an appeal is being heard, the traffic commissioner will give at least 21 days notice of its time and place, except in urgent or exceptional circumstances or where the appellant and respondent both consent to a shorter period. The time and place of the hearing will be published in Notices and Proceedings.

7.15 Hearings are held in public, except where the traffic commissioner decides otherwise. Reasons for holding a hearing fully or partially in private can include the likely disclosure of intimate personal or financial circumstances, commercially sensitive information, information obtained in confidence; or other exceptional circumstances.

Disposing of an appeal

7.16 A commissioner can dispose of an appeal without a hearing if they strike it out. Reasons for striking out may include the commissioner concluding that an appeal has no chance of success. Not complying with one or more aspects of the appeals process does not necessarily constitute grounds for striking out. While striking out is an option where this occurs, the commissioner may also decide to waive the requirement in question, require the failure to be remedied, or restrict that party's participation in the appeal. Where an appeal is struck out, the appellant may apply within 28 days to the traffic commissioner for it to be reinstated, setting out their grounds for doing so.

7.17 If the commissioner holds a hearing to deal with a preliminary issue, and no further issue remains to be determined, then the commissioner may dispose of the appeal without a further hearing.

Lead cases

7.18 Where there are two or more cases which raise similar issues of fact or law, the traffic commissioner may consider it appropriate to specify a 'lead appeal' and stay the others. When the traffic commissioner reaches a decision on the related issues, they must send a copy to the appellants and respondents in the stayed appeals. If either party wishes to appeal that the decision should not apply in their case, they must apply in writing to the traffic commissioner within 28 days. The traffic commissioner must then give directions as to whether they will dispose of the appeal, or issue further directions.

7.19 Where the lead appeal is withdrawn before a decision is reached, the traffic commissioner will give directions as to whether they intend to specify another lead case and whether any direction affecting the cases should be set aside or amended.

Attendance at a hearing

7.20 The appellant and respondent to an appeal are entitled to attend the hearing and to send written representations to the traffic commissioner. They are entitled to give evidence, call or cross-examine witnesses, and address the traffic commissioner on the evidence and the general subject matter of the hearing. Other people may also do this but only at the traffic commissioner's discretion.

7.21 The traffic commissioner determines who is permitted to attend a hearing or part of a hearing held in private. They may also exclude anyone whose presence they consider disruptive or inappropriate. Similarly, they may refuse to permit the giving or calling of evidence, cross-examinations or presentation of other matters if they consider it to be irrelevant, repetitious, frivolous or vexatious. They may give a direction permitting or requesting any person to attend and take part in a hearing, or to make written submissions, in relation to a particular issue.

7.22 Anyone taking part in a hearing may be represented by counsel, solicitor or by any other person at the discretion of the traffic commissioner.

7.23 The commissioner must send a copy of any written representations received to any other person entitled, permitted or requested to attend the hearing.

7.24 If a person entitled, permitted or requested to attend a hearing fails to attend, the traffic commissioner may proceed with it if they are satisfied that the person has been notified of the hearing, or that reasonable steps have been taken to notify them. The traffic commissioner may also proceed with the hearing if they consider that it is in the interests of justice to do so.

Results of an appeal

7.25 The traffic commissioner can give their decision orally on the day, or reserve their decision to a later date. However, once a decision has been made, the traffic commissioner must send the appellant and respondent a notice setting out their decision and their reasons for it. A notice must also be published in Notices and Proceedings.

7.26 A notice is not required where the parties have been able to reach a consensual decision.

Decision following an appeal to the traffic commissioner

7.27 Following an appeal to the traffic commissioner, the LTA must send a revised decision notification within 5 working days of the date that the appeal was decided, stating whether the registration(s) is to be cancelled. The revised decision notification must contain the minimum information set out in **Annex I**.

It is for the traffic commissioner to determine whether to:

- **uphold the LTA decision**
- reverse the LTA decision;
- substitute their own decision; or
- submit the matter back to the LTA for rehearing.

7.28 The service will be cancelled on the first Monday after 14 days have elapsed from the date of the revised decision notification sent by the LTA

7.27 The LTA may also postpone any cancellation date included in a notification of cancellation for up to 182 days if the (lead) LTA are satisfied that it is necessary to ensure the continuity of services to passengers.

7.28 The LTA can postpone the cancellation of a registration for up to 182 days if it is satisfied that it is necessary to do so to ensure continuity of service.

The LTA can also:

- postpone a cancellation for up to 70 days
- revoke a cancellation

if the LTA are satisfied that there is no longer a cause for the cancellation.

7.29 Any traffic commissioner's decision can be appealed to the Upper Tribunal (PSV 353A provides details) and notification of this right is included with the traffic commissioner's decision notice.

Note: This means that the LTA can also appeal the traffic commissioner's decision to the Upper Tribunal.

Parties on appeal to the Upper Tribunal

7.30 The parties to a case on appeal to the Upper Tribunal are:

- The operator that lodged the appeal to the Traffic Commissioner;
- The LTA or lead LTA;
- The traffic commissioner.

Decision following an appeal to the Upper Tribunal

Appeal against a traffic commissioner decision where the traffic commissioner is also the registration authority

7.31 If a decision by a traffic commissioner to cancel a registration is upheld by the Upper Tribunal, the traffic commissioner must send a revised decision notification to the operator(s) and the LTA within 5 working days of the date that the appeal is decided stating whether the service(s) will be cancelled. The revised decision notification must contain the minimum information set out in **Annex I**.

7.32 If the decision also requires the LTA to cancel a registration, that cancellation must take effect on the first Monday 5 days after the date on which the notification under 7.31 above was sent.

7.33 The traffic commissioner can postpone the cancellation of a registration for up to 182 days if it is requested to do so by the LTA and the traffic commissioner is satisfied that it is necessary to do so to ensure continuity of service.

If requested to do so by the LTA, the traffic commissioner can also:

- postpone a cancellation for up to 70 days
- revoke a cancellation

if they receive a request from the LTA and they are satisfied that there is no longer a cause for the cancellation.

Annexes

Annex A

Content of notice from the LTA to the traffic commissioner when an EP scheme is made or varied – Regulation 3 and 4

Note: The Registration Regulations only mandate the information that must be supplied by the LTA to the traffic commissioner – they do not include the content of the notification to the affected bus operators. However, individual LTAs may wish to base the content of that notification on the requirements below.

(a) A declaration that the LTA named in the notification is the LTA or, as applicable, the lead LTA for the EP scheme(s) and that the EP scheme(s) as made or varied require changes to existing local bus service registrations held by the traffic commissioner.

(b) A description or map of the geographical area of the EP scheme.

(c) Specify the date upon which the scheme(s) or variation(s) come into operation.

(d) Provide full details of the standards of service that will apply in the EP scheme area:

- For area-based requirements, this must include a full description of the geographical area where they will apply.
- For route-based requirements this must include, for each affected service (in addition to the requirements at (e) below):
 - The name of the operator of the service and the number of their operators' licence or community bus permit¹⁶
 - The date from which the route requirement(s) apply and where applicable its duration.
 - The principle start and finishing points of the service.
 - Details of any area-based requirements that it will also need to meet.
 - Whether changes to the timing or frequency of the service will be required in order to satisfy the route requirement.
 - Where the service is an excursion or tour:
- An outline of the route indicating the points where passengers can board or alight.
- The maximum number of vehicle departures on any day

¹⁶ Services operated under s.22 of the Transport Act 1985 are not required to meet the requirements of an EP scheme, but the traffic commissioner will need to know which ones will be operating along corridors subject to a route requirement.

(e) Provide the individual registration numbers of each local bus service registration held by the traffic commissioner that operates wholly within or into (cross-boundary) the area of the scheme (either as made or as varied).

(f) List which of the standards of service listed in (d) above will apply to each of the local bus services registrations listed in (e) above.

(g) Provide details of what action the operator of each registered service listed under (e) above must take to comply with the standards of the scheme and the date from which they must do so. These details can apply to all of an operator's services listed in the notification or where applicable, provide separate details that will apply to each individual service or a group of services.

(f) The date upon which any service that, under its current registered particulars, would not meet the requirements in (f) and (g) above. Operators can of course decide to cancel or vary services to make them comply (with the applicable notice).

Annex B

Suggested content of notice from the LTA to the traffic commissioner when an EP scheme is postponed or revoked

Note: Although the Registration Regulations do not mandate this information, below is the suggested minimum content for this notice.

(a) A declaration that the LTA named in the notification is the LTA or, as applicable, the lead LTA for the EP scheme(s) and that the EP scheme(s) as postponed or revoked.

(b) A description or map of the geographical area of the EP scheme(s) to be postponed or revoked.

(c) The date(s) on which the revocation or postponement will have effect.

(d) The individual registration numbers of each local bus service registration that will be affected by the postponement or revocation.

(e) For each registration listed in (d) above, full details of the effect of the postponement or revocation.

Annex C

Content of notification to operators when the LTA proposes to take over the registration function from the traffic commissioner – Regulation 5 of the 2019 Regulations

Reminder: This notification is only sent to those operators that are running services wholly within the geographical area of the EP. Registration of cross-boundary services always remain with the traffic commissioner

(a) A statement that the relevant registration functions will pass to the LTA and the name of the LTA (or Lead LTA).

(b) The date from which applications to register, vary or cancel a local bus service registration must be made to the LTA, not the traffic commissioner.

(c) Details of the arrangements about how applications by bus operator are made to the LTA and how the relevant application forms may be obtained by the operator (e.g. through the post and web-page for download).

Annex D

Matters that may be taken into account when an LTA determines its fees for registering, varying or cancelling a local bus service – Regulation 12A of the 1986 Registration Regulations (as inserted by Part 3 of the 2019 Registration Regulations).

When determining the fee to be charged, the LTA may only recover:

Staff, accommodation and ancillary costs that are directly attributable to the service registration function.

Note: The fee can be recalculated during the life of the scheme to ensure continued cost recovery.

- If operators request a breakdown of how the fee has been calculated, this should be provided by the LTA. Alternatively, the LTA could publish this information.

In addition:

- The fee is paid by the operator when the application is made; and
- No fee is payable:
- When an application is made to vary a service only to meet the requirements that prohibit or restrict the use of any road by vehicular traffic.
- To apply to record a change in the operator's address.

The LTA can decide that the fee is to be paid when the application is made or up to 10 working days after the application is made.

Annex E

Registration information to be held and published by an LTA when acting as the registration authority – Regulation 6 of the 2019 Regulations

(a) The name and address of the person who made the application and the registration serial number allocated to it by the LTA.

(b) The starting date of the service.

(c) The start and end points of the service.

(d) a description of the route and principal places served.

(e) The frequency of the service and the days it will run.

(f) In the case of variation or cancellation, in addition to (a) above:

- Details of the variation in the registered particulars, or a statement of the cancellation of the registration.
- The effective date of the variation or cancellation.

Annex F

Process for the registration authority to cancel individual registrations for non-compliance with an area-wide requirement

This might be because the operator has failed to meet a vehicle emission requirement that applies across a defined geographical area. There is a separate mechanism for failure to meet a route requirement: see **Annex G**.

Note: The registration authority can also decide to initiate this process independently themselves – e.g. if they receive evidence of non-compliance.

Process if the traffic commissioner is the registration authority – Regulation 8 of the 2019 Regulations

Step 1 – the traffic commissioner sends a notice of intention to cancel to the operator.

This notice must, as a minimum, contain the following information:

- Details of the area-wide requirement(s) which the traffic commissioner considers are not being complied with and the reasons for reaching that conclusion.
- The name and address of the operator of the service
- The registration number of the service or services
- Any supporting evidence that the traffic commissioner believe supports operator non-compliance.
- The notice to the operator must also contain the list of LTAs that the notice has been sent to.

The notice of intention to cancel must also be sent by the traffic commissioner to every LTA whose area, in the traffic commissioner's opinion, would be affected.

Within 28 days of receiving the notice of intention to cancel, an affected LTA can notify the traffic commissioner and affected operator(s) of its preferred date that the service should be cancelled - this may be, for example, to coincide with the start of a subsidised service that replaces it.

Step 2 – Within 10 working days of the notice being given, the operator can send a written notice of compliance to the traffic commissioner

If the operator decides to complete this step, the notice must, as a minimum requirement include:

- The registration number of the service or services in the traffic commissioner's notice

- The operator's reasons why they believe they are complying with area-wide requirements set out in the notice from the traffic commissioner (received under Step 1 above).
- Any supporting evidence that the operator believes supports their belief that there is compliance with the area-wide requirement.

A copy of the notice must be sent by the operator to every LTA who has received a copy of the notice under Step 1, no later than the date on which it is sent to the traffic commissioner.

Step 3 – The traffic commissioner must send to the relevant LTA(s) and the operator of the service a notification of their decision about whether to cancel the service within 10 working days where a notice of compliance has been given¹⁷ where no notice of compliance is given, within 35 working days¹⁸ of the date of the notification to cancel.

This notification must, as a minimum, contain:

- Details of the area-wide requirement(s) which the decision concerns.
- The name and address of the operator that is operating the service(s) that the decision concerns.
- The registration number of the service that the decision concerns.
- The traffic commissioner's decision and the reasons for it.
- A list and description of the evidence that the traffic commissioner relied on in reaching the decision.
- The date on which the cancellation, if any, is to take effect.
- Confirmation that if an appeal is lodged, the cancellation of the registration will be postponed.

Note: As stated above, it is for the Traffic Commissioner to determine how they reach their decision. This may include convening a public inquiry.

Step 4 – Within 10 working days of sending the notification under Step 3 above, the traffic commissioner must publish it.

This will appear in Notices and Proceedings.

Step 5 – The service is cancelled (if applicable) or the operator lodges an appeal

If no appeal is lodged - The cancellation of the service takes place on the latter of either:

- the first Monday after one month has elapsed from the date on which the decision notification was sent under Step 3 above; or
- The LTAs preferred date for cancellation provided under step 1 above.

However, the traffic commissioner has the flexibility to determine a different later cancellation date.

If an appeal is lodged – the cancellation date is postponed until the appeal is heard. The arrangements for appeals and decision-making are set out in Section 7.

¹⁷ The traffic commissioner may extend this period - see Regulation 19 of the 2019 Regulations

¹⁸ The traffic commissioner may extend this period - see Regulation 19 of the 2019 Regulations

Process if the LTA is the registration authority – Regulation 9 of the 2019 Regulations

Step 1 – the LTA sends a notice of intention to cancel to the operator and any other LTA that in their opinion would be affected.

This notice must, as a minimum contain:

- Details of the area-wide requirement(s) which the LTA considers are not being complied with.
- The name and address of the operator of the service.
- The registration number of the service(s) affected
- Any supporting evidence or reasons that the LTA believe supports its belief in the operator's non-compliance.
- The other LTAs that the notice has been sent to.

Step 2 – within 10 working days of receiving the notification of the intention to cancel (beginning with the day of receipt) the operator can send a written notice of compliance to the LTA and any other LTA that the notice under step 1 above has been copied to.

If the operator decides to complete this step, the notice must, as a minimum requirement include:

- A description of the area-wide requirement that the operator believes it is complying with (i.e. the one in the LTA notice received under Step 1 above).
- The registration number of the service(s).
- A statement and any supporting evidence about why the operator believes they are complying with the area-wide requirement.

Step 3 – The LTA must send to the operator of the service a notification of their decision about whether to cancel the service.

This notification must, as a minimum, contain:

- Details of the area-wide requirement(s) which the decision concerns.
- The name and address of the operator that is operating the service(s) that the decision concerns.
- The registration number of the service that the decision concerns.
- The LTA's decision and the reasons for it.
- A list and description of the evidence that the LTA relied on in reaching the decision.
- The date on which the cancellation, if any, is to take effect.
- A statement that if the operator lodges an appeal to the traffic commissioner, the decision will be postponed.

Reminder: It is for the LTA to determine how they reach their decision. However, this does not include any power to hold a public inquiry.

The LTA must send the notice of a decision to cancel within 10 working days of the latter of either:

- Receiving the notice of compliance from the operator under step 2 above; or
- The conclusion of a public inquiry by the traffic commissioner

If the operator does not send a notice of compliance and no public inquiry is held by the traffic commissioner, the notification must be sent by the LTA within 20 working days of it sending the notice of intention to cancel.

Step 4 – Within 10 working days of sending the notification under Step 3 above, the LTA must publish it.

See the requirements about publishing information in paragraphs 4.16 and 4.17 above.

Step 5 – The service is cancelled (if applicable) or the operator lodges an appeal

If no appeal is lodged - The cancellation of the service must take place on the first Monday after 28 days have elapsed from the date on which the decision notification was sent under Step 3 above.

If an appeal is lodged¹⁹ – the cancellation date is postponed until the appeal is heard.

After the appeal and if the cancellation is upheld, the LTA must send a revised decision notification to the operator and the traffic commissioner within 5 working days of the date of the appeal being decided, stating whether it will cancel the registration(s). A revised notification must contain at least the information set out in Step 3 above. The service is cancelled on the first Monday after 14 working days have elapsed from the date on which the revised decision notification has been sent. The LTA must publish the revised decision notification within 10 working days of that date.

LTA flexibility

The LTA can:

- postpone the cancellation for up to 70 days if they are satisfied that it is necessary to do so to ensure the continuity of service.
- revoke a cancellation if they are satisfied that it is in the best interest of passengers.

Where the LTA postpones or revokes a cancellation it must notify the operator that it has done so and, in the case of postponement, the date to which the cancellation is postponed. It must also publish the notification within 10 working days beginning on the day that the decision is made.

Annex G

Arrangements when an application to register or vary a service is received by the registration authority that would breach a route requirement – Regulation 10, 11 and 12 of the 2019 Registration Regulations

Step 1 - The registration authority must accept the application

Even if the application breaches the route requirement in all circumstances (unless the relevant information about the service has not been provided in the application), *it*

¹⁹ See Section 7 for guidance on the appeal process.

cannot be refused – as this would immediately trigger a tendering exercise. However, it can be refused if the operator submitting the application is, at that time, also facing having other registrations cancelled on that route – see Question 2 below.

In practical terms, it may be that the applicant was unaware that a route requirement either existed or applied to their application. If so, the registration authority should contact the applicant informally, before processing the application, to inform them that their application is affected by the route requirement that may result in the cancellation of the service before it even starts operating, and asking them whether they wish to pursue it. If they do, then the application should be accepted and the procedures from Step 2 below should be followed.

Step 2. The registration authority informs all the operators of services subject to the route requirement that a registration application has been accepted that breaches it. The registration authority must also inform any other LTA that would be, in their opinion, be affected by the application.

The particulars that must be included in this notification are as follows:

(a) Details of the service or services that, taken together, would breach the route requirement(s) – including the registration that caused the breach (which has been accepted by the registration authority, but is not yet running).

These details would include the name of the operator, the number of the service and the serial number of the local bus service registration.

(b) Details of the route requirement(s) – taken from the relevant section of the EP scheme - that the registration authority considers the local bus services listed at (a) above would be breaching.

(c) This notice should also say that unless the breach is resolved all the services listed at (a) above will be cancelled by the registration authority and replaced by services operated under tender to the LTA.

(d) The notice must also inform the operators that they can submit a 'notice of compliance' containing those operator's proposals for changing their bus service patterns in a way that would meet the route requirement(s). The notice must also specify that the operator's 'notice of compliance' must be received by the registration authority within 28 days of the notice to cancel being issued.

Looking at the example set out at paragraph 5.6 of section 5 of this document, it can be seen that the main purpose of this mechanism is to explain to the operators what frequency requirement(s) were breached when the application was accepted and that, as a result, operator A and B's registration will be cancelled, along with the application from operator C. Although it seems odd that the registration authority accepts operator C's application and then immediately plans to cancel it before it even provides bus services on the route, this must be done to comply with EU law. That law stipulates that refusing operator C's application when it is submitted to the registration authority immediately creates an 'exclusive right' for operator A and B. EU Regulation 1370/2007 then requires operator A and B's registrations also to be cancelled without notice – leaving the route without any bus services. So these procedures have been put in place to stop that happening while also fulfilling the requirements of the EU Regulation.

The notification must also give the operators affected an opportunity to submit, in response, a 'notice of compliance' – setting out how they propose to change their existing pattern of services to accommodate the new application and also stay within

the route requirement. For example, operator A could decide, voluntarily, to reduce their service pattern from four to two services an hour. Or, operators A and B could each reduce their services by one bus an hour in order to accommodate operator C's application. Operator C could of course, voluntarily withdraw their application at this point, in which case the registration authority must inform operator A and B that this has happened. If this occurs, operator A and B can continue to run services under their existing registrations and no further action is necessary.

There is nothing to prevent the three operators from negotiating with each other prior to submitting a notice of compliance (it may be a good idea to do so) and they can provide a single notice that covers all three services. *Ordinarily, such collusion would be a breach of competition law, but not in this case, as it is done in order to comply with a legal requirement stipulated under the EP.* The main outcome is that the notice of compliance must set out how operator A and B's existing registrations and, where agreed, operator C's application will change in order to meet the route requirement. If the Registration authority accepts these arrangements, they can then be formalised under Schedule 10 of the Transport Act 2000 - see Step 6 below - and the registrations changed accordingly.

Step 3 (if the traffic commissioner is the registration authority) – Within 28 days of receiving the notice of intention to cancel under Step 2 above, the LTA may inform the traffic commissioner and the operators of their preferred date of cancellation

If existing services are to be cancelled, it is important that the LTA can embark on a tendering exercise and have a contracted service ready to take over when operator A and B's services (and operator C's application) are cancelled. So this step is to advise the traffic commissioner (if they are the registration authority) of the date from which they will be able to replace the cancelled service(s) with a tendered one. If the LTA is the registration authority it is assumed that the preferred date will be agreed internally by the LTA.

Step 4 - The operators (if they wish) submit a notice of compliance to the registration authority within 28 days of receiving the notice of intention to cancel under Step 2 above

This notice must include, as a minimum:

- Details of the route requirement or requirements identified in the notice of intention to cancel.
- The registration number of the service or services.
- Details of how the relevant registrations have been changed or will be changed so that the services as a whole comply with the route requirement.
- The date(s) on which those registration changes will have effect.
- Details of any consequent qualifying agreement that the operators have made or intend to make with the LTA under schedule 10 of the Transport Act 2000.

Step 5 - the registration authority decides whether to cancel the service

If a notice of compliance has been received and it sets out arrangements that, in the opinion of the registration authority, would meet the route requirement, the registration authority must then inform the operator(s) that their proposals are acceptable. This notification must, as a minimum, include the information in **Annex I**.

If no notice of compliance has been received or one was submitted that, in the opinion of the registration authority, did not satisfy the route requirement, then the registration authority must inform the operators that the affected services will be cancelled. Again, the notification must, as a minimum, include the information at **Annex I**.

So the aim of this process is to inform operator A, B and C about whether existing or planned services are to be cancelled.

Decision timescales

Note: Working days are Mondays to Fridays which are not public holidays.

If the traffic commissioner is the registration authority

If the traffic commissioner decides to hold an inquiry, the notification must be sent within ten working days of the conclusion of that inquiry²⁰.

If no inquiry is held, the notification must be sent within 35 working days²¹ of the date the notice of intention to cancel was sent.

If the LTA is the registration authority

This notification must be issued within 10 working days of the date by which any notice of compliance from the operator(s) is received.

If no notice of compliance is received, the notification must be sent within 35 working days of the date the notice of intention to cancel was sent.

Within 10 working days of sending the notification, the registration authority must publish it.

Cancellation of services

If services are to be cancelled, the cancellation date will be either:

- The first Monday 28 days after the decision notification (to cancel services) was sent;
- The date on which the service that breached the route requirement was due to start operation;

whichever is the latter.

Step 6 – The operators ensure that any registration changes come into effect on the dates set out in the decision notice received under Step 5

It is a legal requirement that any registration changes are made on time. Where operators are co-operating with each other the LTA and the operators should also formalise that arrangement using the qualifying agreement measures at Schedule 10 of the Transport Act 2000.

Appeal mechanism

If an operator is not happy with a decision by the registration authority, there is an appeal mechanism. Further details of that mechanism are in section 7 above. Where an operator appeals a decision (either to the traffic commissioner or the Upper

²⁰ The traffic commissioner may extend this period - see Regulation 19 of the 2019 Regulations

²¹ The traffic commissioner may extend this period - see Regulation 19 of the 2019 Regulations

Tribunal), the date on which cancellation was due to take effect will be postponed (automatically and indefinitely).

Q.1 What happens if a new operator submits an application to register or vary a service on a route that is already subject to a notice of cancellation?

It is possible that an operator not currently running a service on the route could submit a registration application on a route that is already subject to the procedures outlined earlier in this Annex. In this case, the following procedures apply:

If the new application results in the overall route requirement being met

In this case, the registration authority can grant the new application and revoke the proposed cancellation of the existing registrations.

The new application still results in a route requirement not being met

In this case, the registration authority must undertake the same procedures as outlined earlier in this Annex:

Step 1. The registration authority must accept the application

Step 2. The registration authority informs all the operators of services subject to the route requirement (including the new one) that a further registration application has been accepted that would continue to result in an overall breach.

Step 3. The LTA informs the registration authority of their preferred date of cancellation (which can be the same as for the existing services).

Step 4. The registration authority decides whether to cancel the services - if applicable, in the light of any new notice of compliance.

Q.2 What happens if an operator that is already subject to a notice of cancellation submits a further application to register or vary a service that would still breach the route requirement²²?

It is important that existing operators running services on the route are not able to delay the cancellation of services by submitting new applications and thereby continually 'resetting' the procedures. Therefore, under these circumstances, the registration authority must refuse the application.

Q.3 What happens if a cross-boundary service is subject to a route requirement on the part of the route inside the EP scheme area?

That part of the service must comply with the route requirement.

Annex H

Requirements applying to tendering arrangements for a contract to operate a service resulting from a failure to meet a route requirement – Regulation 14, 15, 16 and 17 of the 2019 Regulations

Note: the existing 'de minimis' legislation also applies to these contracts - Up to 25% of an English authority's gross budget can be directly awarded in this way. This allows local transport authorities in some cases to be excepted from the requirement

²² Regulation 12 of the 2019 Regulations

to let bus subsidy contracts through competitive tender. Further guidance on using de minimis can be found here:

http://transportforcommunities.co.uk/files/Guide_to_De_Minimis_rules.pdf

Otherwise, we suggest that these services are tendered using the LTA's established tendering arrangements.

There are also requirements that apply to the tendering exercise itself:

- (a) It must be competitively tendered (except where 'de minimis' provisions apply);
- (b) must only provide services within the geographical area of the relevant EP scheme;
- (c) the primary purpose must be to implement at least one route requirement. It must also implement any area-wide requirements that also apply to the service;
- (d) the contract must specify the date on which the contracted service is to start. The contract can last for no more than five years, or until the EP scheme expires, whichever is earlier. An emergency, non-tendered, contract can be awarded that lasts no more than 12 months if this, in the opinion of the LTA, is necessary to ensure continuity of service;
- (e) If the tendering documentation invites the operator to pay a price premium to run the service, no more than 33% of the evaluation criteria can relate to any monies paid to the LTA.
- (f) The evaluation criteria must give due regard to:
 - i. The quality of services to be provided.
 - ii. The potential for on-road competition to bring benefits to bus passengers in the enhanced partnership scheme area.
 - iii. The contribution that the service to be operated would provide to overall connectivity within the enhanced partnership scheme area.
 - iv. Any other factors as the LTA considers necessary to consider for the furtherance of the objectives set out in the relevant enhanced partnership plan.

Note: if any of the evaluation criteria are not relevant to a particular contract, that part of the evaluation can just include a statement that it is not relevant.

(g) Any monies received by the LTA as a result of the contract must be used to cover:

- the cost of meeting the obligations set out in the contract exercise for the slot allocation contract concerned and/or
- to provide benefits to bus passengers within the geographical boundaries of the LTAs who are party to the relevant enhanced partnership plan.

These benefits must be additional benefits that did not exist 9 months prior to the invitation to tender for the slot allocation contract being issued.

(h) The obligation or right to provide services under the contract must commence immediately after the cancellation of relevant existing services affected by the route restriction concerned – including as potentially postponed. This does not apply if the contract is awarded on an emergency basis to ensure continuation of services to passengers (as at (d) above).

(i) A contract may not be awarded whilst a decision to cancel a service is subject to an appeal.

(J) A contract may not be awarded until at least 29 days after a notification of cancellation has been given by the registration authority - to allow time for any appeal to be lodged.

There are also procedural requirements:

(a) When the LTA issues an invitation to tender it must notify the traffic commissioner within two working days (beginning with the day it issues the invitation). The notification must include:

- The registration authority's decision to cancel services which have required the LTA to issue an invitation to tender;
- The date the invitation to tender was issued and the intended expiry date of the contract when awarded;
- The date the affected registrations will be cancelled;
- The route and, where applicable, area-wide requirements that the winning bidder will be required to implement.

The notification must also be published by the LTA.

What happens if an application from a new operator is received by the registration authority to register or vary a service on a route where a route requirement has been breached after an invitation to tender has been issued?

The registration authority should accept the application – as not to do creates an 'exclusive right' from that point requiring immediate cancellation of all services (see section 5 of this document). However, the service would be cancelled on the date specified in the notification set out in **Annex G**. An application by an operator that is already subject to a notice of cancellation must be refused by the registration authority – see question 2 in **Annex G**.

The registration authority must also inform the applicant within two working days:

- That the application relates to a route requirement that is currently subject to a tendering exercise;
- That the application will be cancelled on the date specified in the notification required by **Annex G**.

Although it is still open to the applicant to pursue the application at this point, in practice, the service would never operate so it would not be worth the operator registering the service. So within two working days of receiving the above notification, the operator must inform the registration authority whether it still wishes to pursue the application.

What happens if I apply to register a cross-boundary service that is subject to a tendering exercise?

When the traffic commissioner receives an application for a cross-boundary route that will be part-replaced by a tendered service, they will cancel that part of the registration when the tendered service begins operation. They will inform the operator of this fact within 5 working days of receiving the application.

When the notification is received, the operator must notify the traffic commissioner within two working days whether it wishes to continue with the application. If no

notifications is received, the traffic commissioner will treat that application as withdrawn.

Once the tendered service is in place, the traffic commissioner will refuse any new applications to run services in the part of any cross-boundary service that proposes to run along a route in an EP scheme area that has a service operated under a replacement contract to the LTA.

Annex I

Content of notification of decision from the registration authority on whether to cancel a registration(s)

Details of the requirement(s) which the decision concerns:

- The name and address of the operator that is operating the service(s) that the decision concerns.
- The registration number of the service(s) that the decision concerns.
- Details of the requirement(s) in the EP scheme that the decision concerns.
- The registration authority's decision and the reasons for it.
- A list and description of the evidence that the registration authority relied on in reaching the decision.
- The date on which the cancellation or variation, if any, is to take effect.
- A statement confirming that if an appeal is lodged against any decision(s) to cancel, the cancellation will be postponed.
- If applicable, the date by which operators are required to submit a registration variation(s) that would either (a) satisfy the requirements that the decision concerns, or (b) result in the varied service no longer being required to meet the conditions that the decision concerns.