

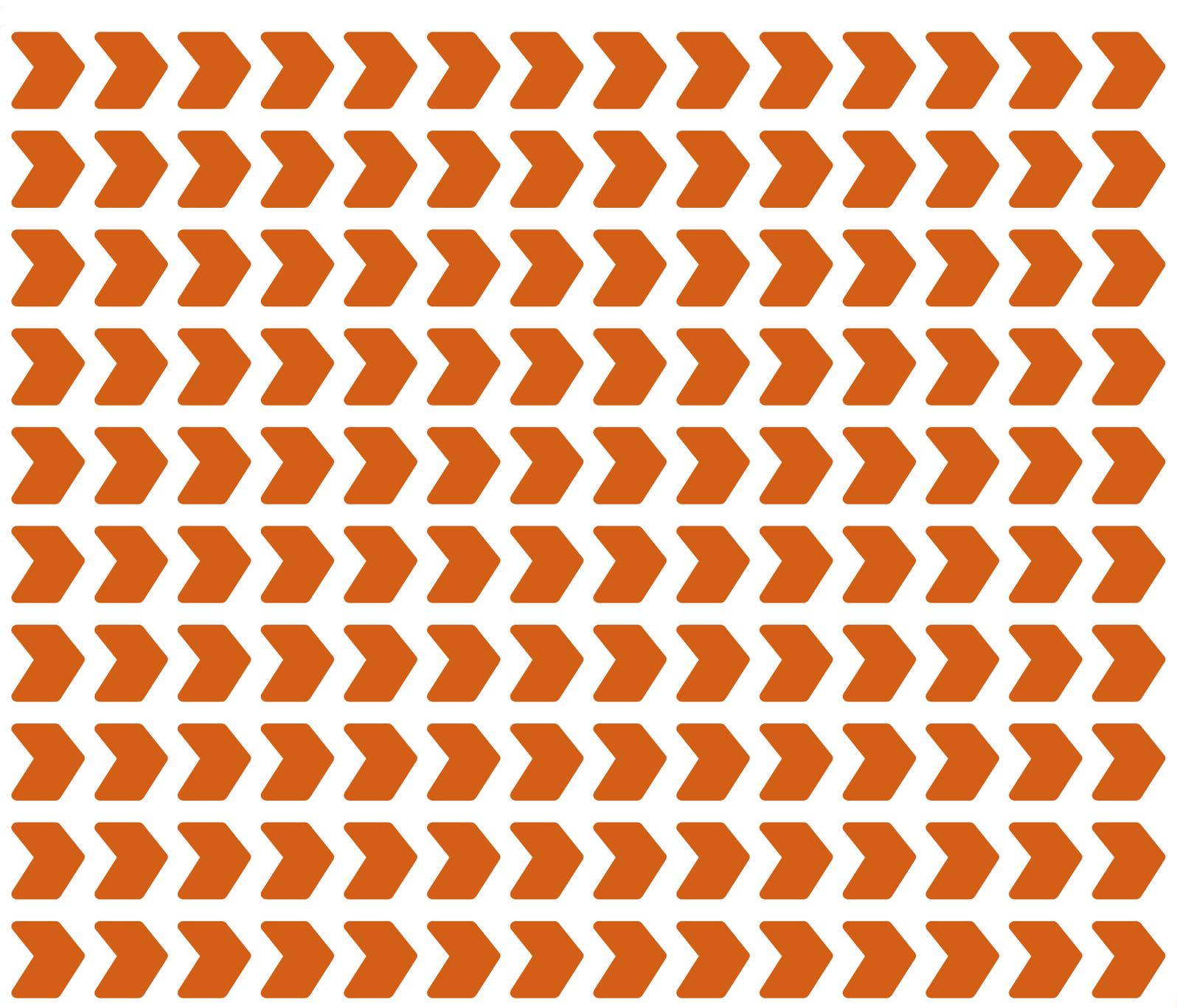


Department  
for Transport

# The National Bus Strategy

## Delivering Bus Service Improvement Plans using an Enhanced Partnership

Guidance



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# 1. Introduction

- 1.1 This document provides guidance to help Local Transport Authorities and bus operators to work collaboratively and at pace to deliver the ambitions set out in their Bus Service Improvement Plans – if they have chosen to use a statutory Enhanced Partnership (EP) under the Transport Act 2000 – in order to qualify for future Government funding as set out in the National Bus Strategy and BSIP Guidance. We recognise that there may be other circumstances in which LTAs wish to create EPs. This guidance remains relevant as it sets out the general principles regarding the creation of an EP, although not all references to BSIPs will be relevant.

## **The National Bus Strategy**

- 1.2 The National Bus Strategy ('the Strategy') sets out a fast-paced and ambitious vision to dramatically improve bus services in England outside London. The pandemic caused a significant shift from public transport to the private car and to avoid the worst effects of a car-led recovery, buses must build back better – working at pace to deliver a fully integrated service, simple, multi-modal tickets, increases in bus priority measures, high-quality information for passengers and in larger places, turn-up-and-go frequencies that keep running into the evenings and at weekends.
- 1.3 The pandemic has resulted in stronger and closer cooperation between Local Transport Authorities (LTAs) and their local bus operators. We cannot afford to lose this momentum and need to expand that good work. The quality of bus services before the pandemic varied greatly across the country and the Government is determined that great bus services should be available to everyone, everywhere. The Bus Services Act 2017 provided the tools needed to deliver this and will be backed by £3bn of new funding.

## **Bus Service Improvement Plans**

- 1.4 As the Strategy explains, there can be no return to a situation where services are planned on a purely commercial basis with little or no engagement with, or support from LTAs. Bus Services Improvement Plans (BSIPs) are how LTAs, working closely with their local bus operators, address this - setting out their vision for delivering the step-change in bus services that are required by the Strategy.

## **Using an Enhanced Partnership to deliver the BSIP**

- 1.5 The Strategy requires LTAs to follow either a statutory Enhanced Partnership (EP) or franchising to deliver the specific actions which will enable BSIP outcomes. This document sets out the steps which LTAs need to take, in close collaboration with bus operators and other key stakeholders, to make an EP. It is intended for:
  - (a) LTAs and operators wishing to establish a new EP to meet the April 2022 deadline for making an EP plan and scheme, as set out in the Strategy; and
  - (b) LTAs and operators that wish subsequently to change or revoke a 'made' EP plan and scheme, in whole or in part.

- 1.6 An EP is a statutory partnership between one or more LTAs and their local bus operators that sets out how they will work together to deliver BSIP outcomes in the defined geographical area(s) set out in the EP. It is in two parts:
- **An EP Plan** - a clear vision of the improvements to bus services that the EP is aiming to deliver, mirroring the BSIP.
  - **One or more EP schemes** – an accompanying document that sets out the requirements that need to be met by local services that stop in the geographical area defined in the EP scheme, to achieve BSIP outcomes.
- 1.7 The LTA has formal responsibility for making the scheme, but at set points in the process they can only proceed with their proposals if they have the support of a defined proportion of local bus operators. An EP only applies to registered local bus services, not coach services, community transport services or other types of road passenger transport. However, as explained in the BSIP guidance, **community bus services can provide an important contribution to meeting overall bus transport needs and delivering BSIP outcomes, especially in rural areas**. We would encourage LTAs and community transport operators to co-operate together and with commercial bus operators to deliver BSIP outcomes – using, for example, a separate contractual agreement, a memorandum of understanding or, for section 22 operators, a voluntary partnership agreement.
- 1.8 The 2017 Act allows individual LTAs to tailor their EP schemes to deliver the specific outcomes set out in their BSIP. Please also bear in mind that the EP legislation was inserted into the Transport Act 2000 (the 2000 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 both references to both Acts in this guidance.
- 1.9 This document includes two different types of guidance:
- Informal guidance which seeks to explain how EPs work in practice and offer some practical suggestions on how to use them to deliver BSIP outcomes. 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 LTAs to have regard to it. It may however reference requirements which are themselves set out in legislation (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 2000 Act (as inserted by the 2017 Act).
- 1.10 Please note that this guidance is not a substitute for reading the statutory requirements in sections 138A-138S of the 2000 Act (and regulations made under those sections) or for obtaining independent legal advice.

## 2. Delivering the BSIP using an Enhanced Partnership

### Initial discussions

2.1 The BSIP guidance recommends that to facilitate continuous engagement between key stakeholders, each area creates a forum for discussion. This forum should also be used for initial exploratory discussions on the EP. Each authority, or authorities acting jointly if it has been decided at the BSIP stage to pursue a joint EP, should explore with operators of local bus services how to use the EP to deliver the specific improvements to bus services required to meet the ambitions set out in the published BSIP. To help this, it is recommended that the LTA produce a table either setting out:

- If the published BSIP is not available, its 'wish list' of bus improvements it would like to see delivered by the EP process. Under these circumstances, the bus operators should also collectively produce a similar list; or
- If the BSIP is available, all the BSIP commitments;

and circulate those to all participants before the first meeting. This will allow the forum to focus on the specific 'on the ground' interventions that are required to deliver each one. Not all will be deliverable using the EP powers – some may require wider agreements that complement the EP – but it is useful to have them all in one place so plans can be made for delivering each one and progress tracked.

2.2 These early discussions and engagement are vital. An EP is intended to be more collaborative in nature than an Advanced Quality Partnership. An EP is developed following consultation between the authority and operators on what action each side will take to improve local bus services to deliver BSIP outcomes. Although, under the legislation, the authority 'makes' the EP, they cannot do so in isolation without the agreement of a defined number of relevant operators<sup>1</sup>. So an EP is in practice a joint proposal between the LTA and local bus operators because both the authority *and* a defined proportion of operators must agree to it (i.e. not object) for the EP to go ahead. As described in the Bus Strategy, from 1 July 2021 only LTAs and operators who have started the statutory process of franchising bus services, or committed to establishing Enhanced Partnerships across their entire areas will continue to receive the COVID-19 Bus Services Support Grant (CBSSG) or any new sources of bus funding from the Government's £3bn budget. As part of wider reform of the Bus Service Operators Grant – see below – we will consult on linking payment of that reformed grant to these commitments. Operators will not be disadvantaged for any failure to establish an EP for reasons beyond their control. Flexibility and continuous

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<sup>1</sup> Guidance about the operator objection process is set out in section 5.

engagement are key to achieving agreement between the parties. But the focus should remain on working at pace to deliver BSIP outcomes.

## Notice of Intention and Invitation to Participate

- 2.3 The Strategy required each LTA wishing to deliver their BSIP using an EP to issue a formal notice of its intention to prepare an EP by June 2021. A template notice is provided in the BSIP guidance, and a copy is at **Annex C**. It is up to the LTA to decide how they give notice of their intention to prepare a plan and scheme. They may choose to do so via their website or local newspapers, for example. The notice should, however, be drawn to the attention of all local operators running services within or into the proposed geographical area of the EP and an invitation to participate in the development of the EP should be sent to the address that is listed on the PSV operator's licence of each operator concerned.
- 2.4 Operators that start providing services in the relevant geographical area whilst the EP proposals are being considered must also be invited to participate. The involvement of all local bus operators early on and throughout the process is vital in determining how to deliver BSIP outcomes quickly. **As the Strategy says, in return for Government support and funding we expect all operators to participate and co-operate fully, via partnership working, with the EP process and to deliver BSIP outcomes.** The authority must ensure that all operators who may be affected are kept informed of the progress of those discussions in terms of outcomes and be allowed to contribute to the discussions at any point. The invitation should make clear that any requirements imposed by the EP will apply to all affected operators of local bus services.
- 2.5 Once notice has been given and invitations to participate have been issued, formal discussions and engagement between authorities and local bus service operators can commence on the content of an EP. As stated above, these discussions will focus on delivering either a draft or published<sup>2</sup> BSIP and deciding how the EP is used to deliver specific BSIP outcomes.
- 2.6 Other stakeholders such as passenger groups should also be involved at this stage to ensure that the EP package properly delivers the BSIP for passengers. The scale of stakeholder participation should reflect the ambition of the BSIP proposals that the EP will deliver. An EP that includes cities, other significant urban areas or multiple LTA areas is likely to involve more engagement with many different stakeholders and need governance structures that can support it.

## Role of the forum

- 2.7 At this point, the forum moves on from initial discussions to overseeing work on EP delivery. Its membership should be expanded beyond the LTA and local bus operators to include representatives of passenger groups, local businesses, the Local Enterprise Partnership and local authorities from neighbouring areas – who will of course be delivering their own BSIP using the EP and/or franchising legislation. Implementation of the EP will be a matter for the LTA and operators – but this does

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<sup>2</sup> Or draft revised BSIP from April 2022 onwards

not prevent or exclude others on the forum from contributing to its development. As with developing the BSIP, it may also be desirable for the forum to have an independent chair, or arrangements for the chair to rotate between key stakeholders or between the operators and the authority. What is important is that those discussions should be open, honest and focussed on delivering BSIP outcomes.

**Note:** These processes are also important because they can, in part, duplicate the outcomes of a public consultation process. This may mean that the consultation period for responses to the subsequent public consultation can be reduced because it is only necessary to seek views from stakeholders that have not been involved up to that point – such as local people. So it is important that all forum members, particularly external stakeholders, should air objections and reservations during this initial stage – they should not emerge as a response to formal consultation.

## 3. The EP plan and scheme(s)

- 3.1 This section of the guidance is designed to assist operators and local transport authorities in developing, together, the content of EP plans and scheme(s) to deliver their published BSIP.

### What are the plan and scheme(s)?

- 3.2 Once authorities and relevant bus operators have discussed and published their BSIP, the next step is to draft the formal documentation that delivers BSIP outcomes ‘on the ground’. For an EP, this comprises:
- **an EP plan** - which is a high-level vision and objectives for bus services in the local area and closely follows or replicates relevant sections of the BSIP (see paragraphs 3.3-3.4); and
  - **one or more EP scheme(s)** - which set out the precise detail of how the BSIP vision and objectives will be achieved, including any commitments made by the local authority or standards to be met by bus operators (see paragraphs 3.5-3.8)

### EP plans

- 3.3 The EP plan is the high-level strategic document that sets the bus network in the EP area into context<sup>3</sup>. There are a number of specific things that the plan must cover, but if LTAs have followed the BSIP guidance properly, they should also be covered by the BSIP- **so LTAs should look to replicate relevant content from the BSIP into the EP plan**. This offers two advantages:
- It saves the LTA from writing the EP plan from scratch. This is because the BSIP and EP plan content (as set out in legislation) are very similar.

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<sup>3</sup> Section 138A of the 2000 Act/ section 9 of the 2017 Act

- The BSIP is not subject to public consultation because it is not a statutory document. However, the Transport Act 2000 sets out clear rules that an EP Plan (and scheme) must be subject to:
  - (a) The operator objection mechanism; and
  - (b) a public consultation exercise<sup>4</sup>.

However, the BSIP and EP Plan are not identical. An EP plan provides an open-arching basis for the associated EP scheme(s) and is generally applicable over the period until the Plan is reviewed, whereas a BSIP can set out longer term ambitions and objectives that reach beyond the life of the current Plan.

### 3.4 In addition to addressing the statutory requirements set out in s.138A of the 2000 Act, an EP plan should specify:

- a map of the geographical area it covers – the BSIP will cover the whole of the geographical area, so we expect the EP to do so as well;
- Specify how it is to be reviewed and the dates by which reviews are to be completed – The BSIP will be reviewed annually, so as a minimum, the EP scheme should as well, to ensure they are properly aligned;
- all the relevant factors that the parties consider will affect, or have the potential to affect, the local bus market over the life of the plan – these should have been identified and evaluated and included in the BSIP;
- a summary of any available information on passengers' experiences of using bus services in the area and the priorities of users and non-users for improving them – the BSIP should already include available survey data;
- a summary of any available data on trends in bus journey speeds and the impact of congestion on local bus services – again, the BSIP should already include comprehensive data;
- what outcomes need to be delivered to improve local bus services in the plan area; and
- what overall interventions the partnership believes need to be taken to deliver those outcomes.

The last two bullets should also be available from BSIP data by a combination of what targets have been set and the interventions the BSIP identifies as being required.

## EP schemes

- ### 3.5
- The EP plan cannot exist on its own. It also requires a separate document that sets out in detail the specific interventions that will deliver the EP plan. This is the purpose of an EP scheme and there must always be one or more EP scheme(s) in addition to the EP plan. An EP scheme<sup>5</sup> sets out requirements that local bus services must abide by and actions to be taken by the LTA to deliver 'on the ground' the policies and objectives set out in the EP plan. Again, it is important to emphasise that these elements must be formally agreed by both the LTA (who decide whether to 'make' the scheme) and the majority of bus operators, through proper engagement between

<sup>4</sup> Followed by a further operator objection period if modifications are made post-consultation

<sup>5</sup> For scheme, also read schemes – as an individual plan can have more than one scheme.

them and the LTA, culminating in the operator objection mechanism. Neither side can impose an EP scheme unilaterally.

3.6 Under section 138A and 138H of the 2000 Act, a scheme must state<sup>6</sup>:

- the area to which it relates;
- the requirements imposed on local bus services under it;
- whether the operation of the scheme is to be reviewed and, if so, how and by which dates;
- the date on which it is to come into operation; and
- the period for which it is to remain in operation.

3.7 The 2000 Act also provides that the scheme must:

- specify the 'facilities' (if any) that are to be provided by the authority (and the date from which they are to be provided if it is not the date when the scheme comes into operation);
- specify the 'measures' (if any) that are to be taken by the authority (and the date from which they are to be provided if it is not the date when the scheme comes into operation); and
- include provision (if any) about its variation or revocation (including any dates on which they come into force or cease to apply).

### Applying the requirements of an EP scheme to local bus services

3.8 The requirements of an EP scheme apply to all local bus services unless the scheme either

- excludes a particular category of local bus service, or
- Defines a particular category of local service that particular requirements apply to.

An EP is only intended to cover bus services that are:

- Registered as 'local bus services' with the traffic commissioner; and
- used by local people.

Individual EPs should therefore consider exempting long-distance coach services that are required to be registered as local bus services simply because of their boarding or alighting arrangements at the start or end of their routes. For practical reasons, schemes may also wish to exempt cross-boundary services that only marginally enter the EP area – for example, where livery standards apply.

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<sup>6</sup> Section 138A and 138H were inserted by section 9 of the 2017 Act.

## Content of initial EP Plan and Scheme

3.9 LTAs must deliver a 'made' plan and scheme by the end of March 2022. This section sets out the minimum content that we expect to see in all EP plans and schemes.

### EP Plan

3.10 We expect all EP Plans to reflect the full ambition set out in the published BSIP – mostly by replicating relevant BSIP content. This will provide the mandate for the specific interventions set out in the EP scheme.

### EP Scheme

3.11 The Government recognises that individual LTAs will be offering different levels of content in their initial EP scheme in April 2022 because of a range of local factors. These might include, the scale of existing bus 'facilities' and 'measures', availability of LTA or new central Government funding, administrative resource and whether the bus market or scale of LTA investment at the time gives local operators the confidence to invest and make particular binding commitments.

3.12 Although there is no limit on the number of schemes that can be associated with a plan, we would recommend that, due to time pressures, LTAs only consider a single scheme at this stage. There is no limit to the volume or range of content that can be included in an individual scheme and further schemes can be added at any time thereafter (subject to consultation and the operator objection mechanism). **Given time pressures, LTAs should concentrate on what can be delivered by the March 2022 deadline and are the highest priority for delivering BSIP outcomes.** Speed is of the essence here, and remember that additional scheme requirements can be added later using a bespoke variation mechanism (see paragraphs 7.19-7.25 below).

### Initial EP Scheme by April 2022

3.13 As the commercial bus market will be emerging from the Covid-19 pandemic, the initial EP scheme is likely to be heavily weighted towards what LTAs can provide through 'facilities' and 'measures'. With this in mind, there are two particular areas where all initial 'made' EP schemes (i.e. those published by April 2022) should offer content:

- **Existing LTA and bus operator investment and infrastructure**

3.14 LTAs already invest in buses. Whether this is through, for example, socially necessary services; provision, maintenance and improvement of on-street furniture such as bus stops; or information and marketing material through printed or electronic means.

3.15 We would expect all LTAs to include current bus spending in EP schemes as 'measures' – even if there are conditions on that funding such as review arrangements or a time-limit on particular pots. For example, the LTA could agree to provide a fixed funding pot for, say, bus lane enforcement for a particular year, with a new pot introduced the following year as a scheme variation. LTAs should also memorialise existing infrastructure, such as bus

priority measures – e.g. bus lanes (with extended hours of operation where this is beneficial because buses do, or will run to deliver BSIP outcomes), bus gates and traffic signals giving buses priority and particular junctions.

3.16 This is also the case for individual bus operators. They can memorialise existing and already planned future investment by agreeing to ‘standards of service’ that reflect that planned investment – e.g. by committing to introduce newer vehicles in a defined area or on particular routes.

- **New DfT funding**

3.17 We would normally expect new DfT funding to be included in an EP – either as ‘facilities’, ‘measures’ or revised ‘standards of service’ on operators, depending on how that funding is to be spent and what reciprocal action operators have agreed to take. If new DfT funding is provided, this can be included either when the scheme is ‘made’ if time permits, or, if funding is awarded later, by varying the scheme (see the section immediately below).

- **Including flexibility to vary EP schemes without following formal variation procedures**

3.18 Section seven below explains how individual EP schemes can include mechanisms that allow this flexibility. We expect all LTAs to include these provisions in every EP scheme for sound practical reasons, as they allow changes to be made without the scheme needing to be formally varied – e.g. when new funding is awarded or ongoing delivery of BSIP outcomes requires amending the EP scheme or new provisions to be added.

## Provision of information

3.19 The BSIP should set out the arrangements for LTAs and bus operators to share information in future as well as providing a suite of information about the existing performance of local bus services to inform BSIP content. We expect these arrangements to continue on a voluntary basis, to aid EP development and future monitoring. Provisions in the 2000 Act, inserted by the 2017 Act, and Regulations made under these<sup>7</sup> enable the LTA to obtain certain, specified information about local bus services that operate either within or into the area in connection with preparing, or carrying out various functions as part of an EP plan or scheme. For these purposes, ‘area’ means the geographical area of the proposed EP as described in the initial notice of the intention to prepare a plan and scheme.

3.20 If they are needed, authorities should request information which they believe:

(a) is relevant to the work being undertaken on the EP; and

(b) they need and do not already hold as a result of existing information sharing arrangements.

3.21 LTAs should engage proactively with local bus operators before and throughout the information request process to understand the ways in which operators hold the relevant information and how long it may take to collate and provide. Any concerns expressed by local bus operators about the scope of the information requested should be considered carefully.

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<sup>7</sup> Section 143B of the 2000 Act as inserted by section 10 of the 2017 Act and the Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017.

3.22 The words in bold letters in each bullet point below summarise the type of information that may be requested under the Schedule to the information Regulations<sup>8</sup>. The guidance on what this may include is in normal text.

- **How and when a local service operated by an operator is used by passengers once the EP has been made or varied.** This data is crucial and should be collected with as much granularity as possible, making full use of existing datasets – e.g. from ticket machines. This can include, if available, patronage data broken down by for example, age or gender. It can also include such data broken down by time of day, time of year, or on a daily/hourly basis; how and when the local service is likely to be used by passengers once the EP plan or scheme has been made or, as the case may be, varied. For example, any analysis or forecasts that an individual operator may have undertaken on the effects of an EP plan or scheme once implemented or varied after implementation, could be requested.
- **The structure of fares for journeys on the local service.** This enables the LTA to request information on the structure of fares (e.g. single fares, period passes, through tickets etc) on local bus services within or entering into the authority's geographical area.
- **The types of tickets used by passengers, and by particular types of passenger, on the local service.** This enables the LTA to get a detailed picture of the current ticket usage on all or selected local bus services in their geographical area.
- **The time taken for journeys, and parts of journeys, on the local service including information about adherence to timetables at all times or at certain times of the day.** Reliability and journey time are two vital factors that influence whether and how often people use bus services. Therefore, it is important that the LTA can obtain a detailed picture of how local bus services are performing 'on the ground' and this power can be used to obtain real-time or other types of data.
- **The total distance, in miles or kilometres, covered by all vehicles used by the operator in operating qualifying local services in the area.** This enables the LTA to request both registered and operated mileage so, for example, the authority can calculate registered mileage and therefore market share for use in the operator objection mechanism (see section 5 of this document), but it can also be used for other purposes as well, such as to get a picture of total service provision.
- **The vehicles used on local bus services, including information about the age of those vehicles, emissions and types of fuel or power.** This will enable the authority to obtain a detailed picture of the vehicle fleet used to operate on local services in the EP geographical area.
- **The result of any activities undertaken with a view to promoting increased passenger use of the local service.** This would include information on, say, any promotional activities undertaken by the operator at any time prior to the request being made, and information on any outcomes, such as the effect on patronage; and
- **The particulars of a local service's registration under section 6 of the Transport Act 1985.** This information could, for example, be useful if the authority intends (or is required) to take over the registration function from the traffic

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<sup>8</sup> The Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017.

commissioner. They may wish to do this in order better to monitor and enforce EP standards.

- 3.23 Information may be requested in any form in which it is reasonable to expect it to be provided, taking into account the manner in which it is kept. The authority can also specify when the information should be provided, but again, this must be within a reasonable time period (e.g. 2-4 weeks). The authority must inform a traffic commissioner of any operator failing to take reasonable steps to comply with information requests. The traffic commissioners have powers to take action against operators who have failed to comply with a request for information<sup>9</sup>.
- 3.24 The authority may only use the information provided for the purposes for which it was obtained. Where it is necessary for those purposes, the LTA may share the obtained information with:
- a local transport authority;
  - the Secretary of State for Transport;
  - a Metropolitan District Council; and/or
  - anyone providing services to any of the above, such as a consultant (including anyone providing services to the authority who obtained the information).
- 3.25 It is possible that some of the information obtained will be commercially sensitive. The authority should therefore seek to aggregate information it obtains where possible and appropriate - given the nature of the work being undertaken on the EP scheme - and put in place measures to avoid inadvertently disclosing any commercially sensitive information provided by a bus operator. If an operator can demonstrate that certain information they provide is commercially sensitive, authorities should also look favourably upon any request from the operator concerned for a confidentiality or non-disclosure agreement. Authorities should also consider carefully what confidentiality agreements may be needed if information is shared with another body as described at paragraph 3.24 above.
- 3.26 Information obtained using these powers must not be disclosed if it is information that the authority would refuse to disclose in response to a request under the Freedom of Information Act 2000 in reliance on provisions in the Freedom of Information Act 2000<sup>10</sup> that exempt disclosure of certain categories of information. In broad terms, these categories relate to:
- personal information;
  - information provided in confidence;
  - information subject to legal professional privilege;
  - Information constituting certain commercial interests.
- 3.27 However, these restrictions do not prevent it being shared as set out at paragraph 3.26 above, or disclosed:
- If it is personal information and the person concerned has consented to its disclosure;

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<sup>9</sup> Section 155(1ZD) of the 2000 Act inserted by paragraph 6(5) of Schedule 4 to the 2017 Act

<sup>10</sup> See sections 40,41,42 and 43 of the Freedom of Information Act 2000

- in connection with the investigation of crime or for the purposes of criminal proceedings or civil action under the 2017 Act or the Transport Act 1985;
- to comply with a court or tribunal order; and/or
- to comply with a legal requirement.

## Requirements that must be met by the local authority under a scheme

3.28 BSIPs will include a range of actions and outcomes that are for the LTA to deliver. These can be transposed into the EP scheme by imposing specific requirements on the LTA in two ways.

- by providing ‘facilities’; and/or
- taking ‘measures’.

Individual LTAs should consider whether to memorialise their existing funding using these two mechanisms. Further guidance is provided in paragraphs 3.15 and 3.16 and the template at **Annex A**.

### Facilities<sup>11</sup>

3.29 These are new physical assets or changes to them that are provided at specific locations within the scheme area. This is particularly relevant to the delivery of the following BSIP and Bus Strategy outcomes:

- **That there must be significant increases in bus priority – facilities can include delivering physical changes on bus routes.** For example, this can be by introducing:
  - new or improved bus priority measures – such as bus lanes, equipment to give buses priority at junctions, enforced clearways, new ‘buses only’ sections of road or bus gates. This can also include the bus priority contribution to a rapid transit network.
  - Traffic signal priority;
  - Clear and consistent signage for traffic and for bus users;
  - Changing parking provision, vehicle loading arrangements or non-residential parking.
- **Presenting the local bus network as a single system that works together.**
  - Improving bus stop locations and routes to them, improving the waiting environment (including passenger safety) and the hardware required for real-time and other types of integrated information at bus stops.

3.30 The only restriction on facilities and the ‘measures’ outlined below is that they must not include facilities that the authority would provide as part of its duty to obtain and provide passenger information<sup>12</sup>. This prevents an authority from including in the scheme facilities that it has a legal obligation to provide anyway. There is also no separate operator objection mechanism for existing facilities. The EP operator

<sup>11</sup> Section 138A of the 2000 Act/ section 9 of the 2017 Act

<sup>12</sup> Under section 139 or 140 of the 2000 Act.

objection mechanism outlined at section 5 of this document covers the whole EP package, including proposed existing facilities.

### Measures<sup>13</sup>

3.31 The authority can also include in an EP anything else that is within its powers – either statutory or otherwise – to deliver the BSIP. There is deliberately no definition of what a 'measure' is, so there is total flexibility for LTAs and operators to agree what LTA commitments to include as 'measures' to deliver BSIP outcomes and meet the requirements of the Strategy. The only requirement is that 'measures' must be for the purpose of:

- increasing the use of local services serving the routes to which the measures relate or ending or reducing a decline in their use; or
- improving the quality of local services.

3.32 Because the ability for the LTA to introduce 'measures' is so flexible, it is suited to delivering a wide range of BSIP outcomes. For example:

- **Service levels and investment on key corridors** – dealing with underprovision of services, including subsidising daytime, evening and Sunday service levels. It can also include LTA investment in improving frequencies on key radial roads or on feeder routes.
- **Lowering fares** – subsidising low fares in a defined geographical area or to particular passenger groups, e.g. via youth or jobseeker fares.
- **Contributing to bus priority:**
  - changing parking provision. An authority could decide, as part of overall BSIP delivery, to reduce the number of car parking spaces in a particular area, or increase car parking charges. Although neither measure affects buses directly, they do deliver BSIP outcomes by making buses more attractive and the car less so;
  - limit the use of key routes by other types of traffic; and
  - commit to enforce traffic offences that could affect bus services – such as illegal parking in bus lanes;
  - commit to restrict the number of times in a year that roadworks occur on key bus corridors;
  - Commit to ensuring that bus journey times do not increase over the life of the scheme.
- **Demand responsive and socially necessary transport** – the LTA could commit to a level of funding or to funding particular services or at particular times (e.g. late at night).
- **Marketing buses** - introduce LTA-led marketing schemes to promote the use of bus services.

### Obligations on authorities to deliver scheme requirements

3.33 If an authority includes any facilities or measures in a scheme, they have a legal obligation<sup>14</sup> to:

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<sup>13</sup> Section 138D of the 2000 Act/ section 9 of the 2017 Act.

<sup>14</sup> Section 138J of the 2000 Act/ section 9 of the 2017 Act.

- provide the facilities and take the measures not later than the date(s) specified in the scheme; and
- continue to provide those facilities and take those measures throughout the life of the scheme or until a scheme is varied to remove the obligation to do so.

3.34 The only exception to this rule is if:

- the scheme is formally postponed (see section 7 below); or if the LTA decides to formally postpone providing facilities or taking measures.
- if the authority is temporarily unable to provide a facility or take a measure due to circumstances beyond their control.

### The role of highway and other authorities

3.35 The BSIP guidance stresses the importance of ensuring that all parts of the local authority, including the highways department and lower tier authorities, are fully committed to delivering BSIP outcomes.

3.36 As part of the negotiations between the LTA and local bus operators, the LTA or other authorities may decide to offer ‘facilities’ or ‘measures’ that would involve the making or varying of a traffic regulation order (TRO)<sup>15</sup>. These orders can be made either to make permanent changes – such as preventing certain types of traffic from using particular roads on a permanent basis or install a bus lane – or on a temporary basis – i.e. to temporarily close a road because roadworks are taking place. Measures can also be trialled for up to 18 months under an experimental TRO. However, an order can only be made by the relevant traffic authority with the powers to do so on the stretch of road in question.

3.37 For a measure or facility which requires action by a highway or other authority to be included in an EP scheme, that authority must be a formal party to the scheme. In many cases that will already be the authority making the scheme. In others it could be a metropolitan district council or even the Secretary of State for Transport.

3.38 It is important that the LTA ensures that any other relevant authority is in full agreement before offering any facilities or measures that require action by them. Although it is entirely for those authorities to determine if they wish to be a party to the scheme, if they decide to do so, the same obligations to provide those facilities or to take those measures as outlined above also apply.

3.39 Most MCAs now have a Key Route Network (KRN) of the most important local roads for which they share powers to operate and manage with their constituent Local Highways Authorities. The Government plans to consult on strengthening the KRN approach to give MCAs more powers to manage key routes, helping to enable integrated highways and transport planning, better delivery of services across local authority boundaries, and give MCAs greater accountability.

### Requirements applied to bus services in an EP scheme

3.40 The BSIP guidance lists a range of topics that must be included in each BSIP. Some will require action by the LTA, some by operators, or a combination of both. This section deals with including in an EP scheme the requirements that apply only to bus operators and that they must meet and/or abide by<sup>16</sup> to deliver BSIP outcomes. They are divided into ones that are specific to the frequency or timing of individual local

<sup>15</sup> Parts I,II and IV of the Road Traffic Regulation Act 1984

<sup>16</sup> Section 138C of the 2000 Act/ section 9 of the 2017 Act.

services ('route requirements') and other types of requirements that apply more generally – e.g. to the whole scheme area or defined parts of it ('operation requirements')<sup>17</sup>.

## Operation requirements

3.41 There are three main categories of operation requirement which the Government has asked LTAs to include in BSIPs and therefore will need to be included in an EP scheme<sup>18</sup>, which bus operators will need to comply with.

3.42 These are requirements about:

- Seamless integrated local ticketing between operators and across all types of transport;
- The local bus network being presented as a single system that works together, with clear passenger information;
- Modern buses and decarbonisation.

Section 138C of the 2000 Act also specifies various other types of requirement that may be imposed.

### Seamless, integrated local ticketing between operators and across all types of transport

3.43 The NBS and the BSIP guidance place particular emphasis on improving the ticketing offer to passengers. The BSIP should have set out, at a high level, what is required to deliver no-fuss, multi-operator tickets and price caps on contactless credit and debit cards, at little or no premium to single operator fares, and where appropriate how this could be expanded to tickets that cover all travel modes (bus, light rail/metro, rail) – with all buses accepting contactless payment and all operators running on the same route accepting the same tickets. The EP scheme is where the *specific requirements on operators* are defined to deliver this.

3.44 The EP provides flexibility to ensure that all these outcomes are deliverable. EP schemes can introduce requirements to deliver tickets:

- available on particular services – e.g. to make a through journey using specified connecting services or as a travel card on a network of services subject to publicity or marketing requirements set out elsewhere in the EP plan. For example:
  - a ticket valid on a DRT village 'feeder' service that can also be used on a connecting 'main' registered local service into a town centre; or
  - a ticket marketed on, say, 'Red Rover routes' where purchase of a 'Red Rover' branded ticket allows travel on all those services.
- for travel on particular journeys or types of journey. For example, this might be a single ticket that allows travel on any bus service that operates between a specific housing estate and a large shopping centre or town centre;
- for travel at particular times – this might include a specific defined off-peak ticket that can be used on all services in a particular area;

<sup>17</sup> Section 6D of the Transport Act 1985/ section 11 of the 2017 Act.

<sup>18</sup> Section 138C(4)-(7) and (9) of the 2000 Act/ section 9 of the 2017 Act.

- for travel in particular areas – this might specify a ticket that is available for use on all services in, or entering into, a defined zone, or series of zones; and
- tickets for use by particular groups of passengers. For example, this could set eligibility criteria for a young person, student or jobseekers ticket (if operators voluntarily provide these concessions – they cannot be required to do so by the EP scheme for their single operator products).

3.45 These requirements can also be used in combination. For example, a zonal ticketing system with day, week, monthly and an annual travelcard available. This could offer single or multi-operator variants and tickets that can also be used on connecting rail or tram services.

3.46 The table below illustrates what a ticketing package could look like, to deliver specific BSIP outcomes:

TICKETING REGIME FOR BUS SERVICES IN 'ANYTOWN'									
Areas tickets are valid	Type of ticket	Period of validity							
		One day		1 Week		4 Week		12 month	
Zone 1	Bus only	Single operat or Ticket	All operat or ticket	Single operat or ticket	All operat or Ticket	Single operat or ticket	All operat or ticket	Single operat or ticket	All operat or ticket
Zone 2	Bus and tram								
Zone 3	Bus and tram								
Zone 1 & 2	Bus Train and tram								
Zone 1, 2 & 3	Bus Train and tram								

3.47 The package can also offer peak and off-peak variants; a concessionary ticket available to young people (say divided into under 16 years and 16-18), students (21-25 years) and jobseekers. It can also specify what evidence needs to be provided to gain access to these types of concessionary fares. Nothing in this restricts individual operators' ability to deliver BSIP outcomes by offering operator specific tickets or allows the EP to restrict pricing of anything other than multi-operator travelcards.

**NOTE:** Because (a) these provisions will be legal requirements imposed through the local bus service registrations; and (b) the LTA will need to comply with the competition provisions under Schedule 10 of the 2000 Act, these ticketing schemes are *not bound* by the rules and restrictions of the ticketing block exclusions. Nor will operators be subject to action by the competition authority for complying with such schemes.

### Delivering multi-operator ticketing

3.48 The Strategy also expects every LTA area to have a contactless multi-operator ticketing scheme with a price cap. LTAs can sponsor capped prices as a 'measure'.. Enhanced partnerships schemes also include specific powers to specify the price of a multi-operator ticket. This means that the EP scheme could set the price of all the multi-operator products in the table above (including multi-modal tickets in so far as they apply to bus operators in the scheme area). This can include arrangements for

the price to be automatically increased or decreased over time, for example in line with an agreed index of operating costs, improvements in bus journey times or the introduction of new scheme requirements. It can also allow for different multi-operator products to be targeted at different types of user - for example, adult, child, apprentice etc and to be priced differently.

- 3.49 The price of a multi-operator ticket is not restricted to a simple price cap for a multi-operator single or period ticket. It can also be more innovative including, for example, multi-operator carnet products (that could offer discounted travel or on a 'buy ten journeys, get two free' basis), pay-as-you-go schemes and flexible weekly or monthly tickets to reflect new work patterns.
- 3.50 It is important to stress that whilst the scheme can require operators to offer certain types of single-operator product (for particular categories of people, covering certain zones and/or for set periods of time) the price for operator-specific tickets always remains to be set by individual operators themselves (although the price of the multi-operator ticket could impose a de facto price cap).

### How passengers pay and evidence of entitlement to travel

- 3.51 The scheme can also specify how passengers obtain tickets and pay for them. This might require that tickets are available on the bus, at bus stations, via all bus operator's web portals and apps or other types of retail outlets such as (voluntary) participating newsagents. It can also specify that tickets should also be available through a specific network-level portal or app. These requirements can apply to both single and multi-operator tickets to deliver BSIP outcomes.
- 3.52 In these terms a 'ticket' can mean either a paper ticket, smart product such as a period smartcard or e-purse, a token via a smart app or contactless payment or feasibly any other defined means to pay for travel or demonstrate that you have a right to do so. There are also powers to determine what ticketing technology is to be used (for example ITSO or contactless EMV).

### Marketing of ticketing products

- 3.53 The scheme can also require ticketing products to be marketed alongside – i.e. with equal exposure or emphasis – to individual operators' own ticketing products. It can also specify what branding the tickets should use and what the tickets themselves can look like (e.g. colour, logo etc). This, along with the other requirements that can be imposed under a scheme, highlighted above, can be used to provide a complete BSIP-delivering ticketing 'offer' to passengers that covers ticket types, marketing, fares information, ticketing technology and media

### Presenting the bus network as a single system, with clear passenger information

- 3.54 An EP scheme can impose a range of operator requirements to deliver this BSIP requirement:

**A strong network identity** - This could for example, introduce a strongly-branded identity for the bus network. This can specify particular logos, colour schemes, or other types of branding or publicity material – whether provided as physical media (leaflets, posters etc.) or electronically. These requirements then must be used on the publicity material produced by individual operators or by the authority itself. It can also be used to specify a system for determining numbering of individual services. However, as the Strategy says, successful existing brands should not be sacrificed.

**Accurate information** – the BSIP guidance emphasises the importance of clear, ‘wrap-around’ information on all aspects of using bus services, so it becomes a seamless, integrated experience for passengers – e.g. timetables, Real Time Information, ticket availability and pricing and how to access customer support. This could be delivered through a requirement that operators should always provide such accurate passenger information in areas that are clearly defined in the EP. This can require information to be provided in specified ways - on the vehicle, at bus stops and stations, or via the web or on a smartphone or simply by printed material. Again, these requirements can apply to all local bus services or particular descriptions of local services to tailor information to particular services and passengers – e.g. DRT services and users. It can also specify that all bus operators must offer all or specified information on a single (strongly branded) app. The inclusion of information under this heading is necessary but not sufficient to deliver the BSIP requirement.

**Limiting timetable changes** – The BSIP emphasises the need to minimise timetable changes and be co-ordinated across operators, so they happen at the same time. currently, operators of commercial local bus services must give 70 days' notice if they wish to change, for example, the routing or timetable of a service. However, a scheme can specify an alternative arrangement. So, for example, it could specify that all bus services operating in the EP geographical area must restrict changes to a set number of timetable change dates in a year – with exceptions only - for example, where the change is as a result of a service cancellation by another operator or circumstances beyond the operator’s control. The inclusion of information under this heading is necessary but not sufficient to deliver the BSIP requirement.

**Promoting services to particular passenger groups**<sup>19</sup> – This could cover operator requirements to encourage tourists to use buses or other groups such young people or jobseekers. It could also be used to promote bus rapid transit to car users.

### Modern buses and decarbonisation

3.55 BSIPs include ambitious strategies, targets and measures for cutting carbon from transport in their area. EP schemes can include a range of vehicle requirements to deliver these improvements. They can be applied to all vehicles within the area covered by a scheme or just vehicles providing services of a particular description (which could, for example, be defined by areas or locations they serve or to exclude certain types of services - such as long distance coach services which, for some of their route, are also registered local bus services. They can include requirements about:

- the age of vehicles;
- their design. This could specify for example vehicle designs that are between a conventional bus and light rail, used on specific corridors, as part of a bus rapid transit scheme.
- emission standards (which could be met by either using newer buses or retrofitting existing ones to improve their environmental performance);
- accessibility requirements (such as the provision of audio visual information prior to a national requirement to do so being introduced);
- provision of Wi-Fi, USB charging or other technological requirements;

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<sup>19</sup> In line with the Public Service Equality Duty – see paragraph 3.77.

- other requirements about the passenger environment - such as seat style or quality (which could be met by either using newer buses or refurbishing existing ones); and/or
- the appearance of vehicles – such as their livery – or require equipment such as information displays to be installed.

## Route requirements

3.56 BSIPs also include mechanisms to deal with network design and co-ordination between individual services. It also covers overprovision of services. These are established and enforced using the second category of requirements that can be imposed by an EP – route requirements. LTAs are also encouraged to seek help from bus operators when seeking to improve the bus network and the co-ordination of services.

### Timing of individual buses

3.57 ‘Overprovision’ of buses on a specific route or routes does not necessarily mean there that are too many buses on them. It may be that individual buses, especially on routes with competing services, are badly timed. For example, when a number of buses from competing operators arrive in close time proximity at stops, leaving long time-gaps between services. An example of an EP route requirement to address this would be to require the services operating on a particular corridor to have even headways (time gaps between individual bus services) – resulting in a frequent service. Also, ‘bunching’ of services may not be due to aggressive over-competition, but the result of a wider traffic congestion issue that needs to be addressed as well – e.g. via new bus priorities.

3.58 BSIPs also need to ensure that individual bus services connect appropriately with each other – for example by providing hub and spoke connections and between ‘feeder’ buses (e.g. from a group of villages) and major routes. An EP scheme can deliver this by specifying the times at which individual services arrive at bus stops. These requirements can apply to particular services or all services operating along specified corridors. For example, an individual bus service could be required to arrive at a particular bus stop at a particular time to co-ordinate with the arrival or departure of a rail service, or there could be a more general obligation on all services using that stop to co-ordinate with rail timetables. It could also require timetables to co-ordinate with the arrival of say, a connecting DRT service.

**NOTE:** Because operators will be complying with the legal requirements of an EP scheme in adjusting their bus timetables (to reduce the risk of CMA concerns), and the local authority should have considered competition issues in making the scheme, to eliminate the risks to operators of integrating bus and rail services which are, or could be, provided by the same owning group.

### Frequency of services

3.59 A more direct way to deal with overprovision of buses is to specify the frequency of services, on individual routes or corridors. For example, it could specify that no more than six buses an hour can travel, each way, through that corridor. Or it may specify different frequencies at different times. For example, a maximum of six buses an hour during defined peak periods and twelve buses an hour at other times, with, possibly, no restrictions for evenings and weekends. Schemes cannot specify which operators these requirements apply to (although they can be applied to a particular description of services). Therefore, in the above example they are likely to apply to all services

that currently operate or seek to operate along that corridor in the future. This can also be used in conjunction with the powers on timing in the previous section.

- 3.60 These powers might be used if there are particular congestion or air quality issues on a certain route which, by limiting frequency, might encourage operators to divert some buses to another corridor for some of their journey. However, limiting the frequency of bus services should not be seen as an easy alternative to addressing congestion or air quality issues. Buses can play an integral part of the solution to these issues and full consideration should be given to including facilities and/or measures in the schemes which would make bus services a more attractive proposition to potential passengers and so contribute to addressing congestion and environmental challenges, including by modal shift from cars.

**NOTE:** Further guidance on over and underprovision of services in relation to competition law is in [Section 9].

EP powers cannot compel operators to run services along particular corridors. LTAs can use subsidy powers to deal with:

- (a) underprovision - LTAs can provide or subsidise individual services at particular times or to increase frequencies to meet BSIP objectives;
- (b) overprovision - route requirements – e.g. frequency caps and headway requirements to tackle overprovision.

## Obligations on operators to comply with scheme requirements

- 3.61 All local bus services must have their particulars (e.g. route and timetable) registered with the registration authority. This is usually the traffic commissioner, but it could also be the LTA if they take on the registration function. Once an EP is made by the LTA, the standards of service that operators must comply with become conditions of registration. An operator of a local service must, when registering or varying a local bus service with the registration authority, give an undertaking that they will comply with the requirements of the EP that apply to that particular service. If the operator does not give the undertaking, *the registration authority can refuse the registration.*
- 3.62 If the operator does give an undertaking but then does not comply with it in practice - e.g. by refusing to accept the multi-operator ticket - the registration authority can take enforcement action against them **which can include cancelling the registration.** As explained elsewhere, the legislation also contains powers enabling the LTA to become the registration authority for services that operate wholly within the EP area. This allows them to process registrations of new services in that area, agree to variations of existing registrations and also to cancel registrations where the operator is demonstrably not complying with the requirements of the EP scheme that apply to that registration. The registration authority (including the LTA if it has taken on the powers) can also monitor the performance of those local services (e.g. by analysing real-time data) to ensure that services are operating in accordance with the registration.
- 3.63 Any route requirements which impose frequency limitations on a particular corridor could raise particular compliance challenges. The legislation makes specific provisions to deal with this situation and further guidance can be found here:  
<https://www.gov.uk/government/publications/the-bus-services-act-2017-local-bus-service-registration-in-enhanced-partnership-areas>

3.64 Partnership involves continuous engagement, with both sides working together to use the EP powers to deliver the ambitions set out in the BSIP.

## Other potential elements of EP plans and schemes

### Arrangements for reviewing a plan or scheme

3.65 Each plan and scheme must say whether it is subject to review and, if so, specify:

- how it is to be reviewed; and
- the dates on which the reviews are to be completed.

3.66 The BSIP guidance also requires individual BSIPs to be reviewed every 12 months. Where this results in changes which need to be implemented via amendments to the EP plan and/or scheme, LTAs may decide to reduce their administrative burden by amending the EP scheme without using the formal variation mechanism (see section 7 below) and subsequently amending the EP plan (which can only be changed using the 'full' variation procedures in section 7).

3.67 A review of a plan should, as a minimum, consider:

- the issues listed at paragraph 3.4 above;
- the arrangements for consulting passenger representatives on the effectiveness of the EP; and
- the objectives and aspirations in the BSIP for improving the quality and effectiveness of bus services.

3.68 A review of a scheme should, as a minimum, consider the effectiveness of the measures taken, facilities provided, and requirements imposed on operators - particularly in relation to their impact on the objectives for improving services set in the EP plan and BSIP and, if relevant, on bus journey times, passenger satisfaction and growth of the market.

3.69 The plan or scheme can specify a specific calendar date by which a review will be completed or simply say, for example, every five years from the date on which the scheme was formally made. A scheme can also contain different review dates for different elements of a scheme (e.g. one date to review measures and facilities and another to review operation requirements and/or route requirements, or even individual dates for individual elements of a scheme).

3.70 If LTAs change the scheme or circumstances change to an extent that they believe the competition test needs to be applied again, they must do so (see section 8 of this document).

3.71 It may also be appropriate for a scheme which sets the price of multi-operator tickets to include triggers for a review of the price of those tickets - at regular intervals and/or where specific changes in circumstances occur and it would be reasonable to do so. Again, pricing can be changed in the EP scheme without requiring formal variation procedures using the mechanism in section 7 of this document.

### Impacts on small and medium sized operators

3.72 The bus market in England is made up of a small number of very large operators and a large number of very small operators, with a small number in-between. It is important that the needs of small and medium sized operators (SMOs) are considered as part of the development of an EP plan and scheme.

3.73 Defining an SMO is not a straightforward process. It is not simply an operator with a small share of a particular bus market. Whilst this may be the case for a subsidiary of

a large national operator, they still have access to the benefits of their 'parent' company – such as corporate administrative and legal support, access to funding and the lower costs resulting in the buying power such operators enjoy. Nor is it necessarily a 'small and medium sized enterprise' (usually defined as a business with fewer than 250 employees). However, in general we would suggest that the 250 employee limit is a good place to start when identifying the SMOs in the EP area. Of course, if this were to encompass most or a significant proportion of the operators, then the limit should be revised downwards. However, a bus company that, itself, falls into this category but is a subsidiary of a larger bus company would not generally be considered a SMO.

- 3.74 Authorities should conduct a thorough assessment of which operators in the EP area(s) they consider to be SMOs and a summary of this assessment should be included in the EP plan and each scheme. Authorities should, amongst other things, take account of the demands of the BSIP, the overall nature of their bus market, the operator's fleet size and consider the turnover of the operator – where necessary including its parent structures – as a whole. SMOs may be disadvantaged in their ability to engage in aspects of developing the scheme to deliver BSIP outcomes, but excluding such operators may reduce the overall effectiveness of BSIP delivery – so there should be a level playing field between all operators.
- 3.75 Authorities should bear in mind that SMOs may not be well placed to implement the requirements of an EP quickly. Requirements that would attract a considerable administrative burden or large financial outlay such as new vehicles or ticketing equipment are likely to be more difficult if an operator has limited access to capital and/or a relatively limited geographical scope to their operations. Authorities should therefore discuss these issues with SMO operators at an early stage of developing such proposals and, where necessary, make adjustments.

## Public Sector Equality Duty

- 3.76 In developing the EP plan and scheme, authorities should be mindful of their obligations under the Public Sector Equality duty to properly consider groups with protected characteristics. Bus services improve equality of opportunity for a number of protected groups and this should be taken into account.

## Flexibility available to plans and schemes

- 3.77 It is for individual partnerships to decide, through proper stakeholder engagement, how to deliver their BSIP outcomes through the EP – and what EP plan and scheme structure to adopt. Under the Strategy, if the EP route is chosen, an EP plan and scheme must cover the whole<sup>20</sup> of an authority area. Or the EP plan/ scheme can encompass a combination of different authority areas.
- 3.8 An EP plan can be supported by a number of different schemes of varying geography and content that are introduced at different times and have different durations. An individual scheme can cover all of the area to which the EP plan relates, or just part of it. And a plan could have different schemes, covering different parts of the plan area. For example, a specified plan area could have:
- one scheme that delivers BSIP ticketing requirements across the whole area;
  - another scheme dealing only with BSIP route requirements on a particularly congested corridor or key route network; and

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<sup>20</sup> Notwithstanding that part of the LTA area may also be covered by a franchising or legacy AQPS scheme.

- a third scheme that imposes BSIP branding and marketing requirements on all local services operating within a city centre - but not in the rest of the plan area.

3.791 It is also possible for a single scheme to set different implementation dates for separate elements within it. Where the scheme duration is fixed, a longer scheme may give operators stability and greater confidence to invest.

- The core legal requirement is that when a plan is made, it must have at least one scheme associated with it that is made at the same time. A plan cannot be made or stay in force without there being at least one scheme associated with it, and vice versa. There is nothing to prevent further schemes being introduced at any time later on, provided that any new schemes are subject to the full notice, objection and consultation process.

New schemes cannot be introduced using the faster variation arrangements outlined in section 7. **The key principle is that the Strategy requires that an EP Plan and at least one scheme should encompass, as a minimum, the whole LTA geographical area.**

### Notice that a plan and scheme have been prepared<sup>21</sup>

3.80 Once the draft plan and scheme(s) have been prepared, the next stage is to make all relevant local operators aware (if they are not already) of the full details of what is being proposed in the draft plan and scheme that will deliver the BSIP - so that they can offer views on the EP plan and scheme before it is finalised. This is because some operators (particularly smaller ones) may not have been able to participate fully in the preparation of a plan and scheme and so may not have the 'full picture'. So they should now, in any case, be given the opportunity to object to the proposal before it is subject to wider consultation.

3.81 A notice that a plan and scheme have been prepared should be sent, in writing, to all operators of qualifying local services. What constitutes a qualifying local service is set out in regulations<sup>22</sup> and is explained in section 4 below. The decision as to whether or not a service is a qualifying local service is made on the basis of the service's status on the day before the notice is issued.

3.82 The notice should be sent to the address that is listed on the Public Service Vehicle operator's licence of each operator concerned. The authority may also choose also to give notice via their website or other sources, such as local newspapers.

3.83 The notice must:

- contain full details of the plan and scheme and explain briefly how together they will deliver the BSIP;
- explain that operators of qualifying local services have a right to object to the plan (including what constitutes a qualifying local service);
- set out what level of objections is required for the plan and scheme not to proceed to consultation. When plans and schemes are initially proposed this will always be the threshold set out in regulations<sup>28</sup>;
- give a minimum period of 28 days within which objections may be made; and

<sup>21</sup> Section 138F of the 2000 Act/ Section 9 of the 2017 Act

<sup>22</sup> The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017

<sup>28</sup> The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017

- contain details of how an operator should make an objection, including a mail and email address to which objections should be sent.
- 3.84 As part of proper and continuous engagement, operators should be reminded to provide reasons for any objection which they make, in order to assist in the development of revised proposals, if necessary.
- 3.85 Alongside issuing this notice, LTAs may wish to use their powers to obtain information<sup>23</sup> from all operators of the registered distance of all their qualifying local services, to assist the LTA in determining the total distance and so determine whether or not the relevant threshold for objections has been reached.
- 3.86 Further details on determining whether a scheme can proceed to the next stage following objections from operators is provided in the next section of this guidance on the operator objection mechanism – although we expect LTAs and bus operators to work co-operatively (as set out in the Strategy and BSIP Guidance) so this does not prove an obstacle to delivering BSIP outcomes.

## 4. Operator Objections

### Introduction

- 4.1 This section covers the operators' objection mechanism.
- 4.2 Following the notice that a plan and scheme have been prepared, it is for operators of qualifying services within the EP area to determine whether the next stage of the process can go ahead – in this case, to a formal consultation exercise.
- 4.3 The legislation requires that any objection should be made within the deadline set by the authority – but this deadline cannot be less than 28 days after the date on which the notification was sent. Operators should raise any concerns that might lead to an objection with the authority before the objection process commences, so that early resolution can be sought. Where individual operators decide to object, they should provide their justification for doing so – **to object without giving reasons would run against the requirement in the BSIP to co-operate with the EP process to receive discretionary funding, including CBSSG.**
- 4.4 Whilst this section is written with specific reference to objections being made prior to consultation on a plan and scheme, the same principles apply at other points at which operators have the right to object to a plan and/or scheme. However, the bespoke variation mechanism (as set out in paragraphs 7.19-7.25) can apply different objection thresholds or different objection criteria.

### Objection process

<sup>23</sup> Section 10 of the 2017 Act, section 143B of the 2000 Act and the Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017.

## Who can object?

- 4.1 Any operator of qualifying local bus services that operates within or into the geographical area of a plan or scheme on the day before the notice is issued by the authority is entitled to object to the consultation exercise on the plan or scheme. However, if the geographical area of the EP has more than one subsidiary<sup>24</sup> of a parent company - e.g. the Blackmore Group that has two bus companies, Blackmore Buses and Blackmore Red Rover Buses – the secondary legislation requires those two (or more) subsidiaries to be treated as a single operator under the objection mechanism. This is to prevent bus companies splitting into smaller subsidiaries to gain more influence over the objection process.

## What types of local bus services qualify to object?

- 4.2 A service is a "qualifying local service" for objection purposes if it is a registered local bus services which has one or more stopping place within the geographical area of the EP plan or scheme concerned and it is not an excluded service.<sup>25</sup> An excluded service:

- Is a service run under sections 89 to 91 of the Transport Act 1985 where the authority retains all the revenue from that service;
- is a registered local service which is an excursion or tour<sup>32</sup>;
- Is a service operated under Section 22 of the Transport Act 1985 (a community bus service). An EP does not apply to this type of registered service - although there is nothing to prevent the operator from voluntarily complying with some or all of the EP requirements that would otherwise apply to that service; or
- The service has 10% or less of its overall distance (not just the distance within the EP plan or scheme) registered as a local bus service. (This might include interurban or other long-distance scheduled services that are not generally used for local journeys within the EP area, but may use bus stops within it).

- 4.3 Whether or not a particular service is a qualifying local service is determined on its status on the day before the notice is issued.

**Note:** The exemptions above apply only to the objection mechanism. All local services registered with the traffic commissioner that are operating on the date a scheme is made (except section 22 Community Bus Services), or begin operating after that date, will need to comply with the requirements of the scheme – unless the EP itself exempts certain classes of local services (see paragraph 3.8 above).

## How do operators make an objection?

- 4.4 The notice of consultation must contain an address to which objections can be made. This should be a postal address and an email address. The notice must contain the date by which objections from operators must be received. This date cannot be less than 28 days from the date on which the notice is sent.

## What happens once objections are made?

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<sup>24</sup> The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017 defines a 'subsidiary' as having the meaning given by section 1159 of the Companies Act 2006.

<sup>25</sup> As set out in regulation 3 of the Enhanced Partnership Plans and Schemes (Objections) Regulations 2017. <sup>32</sup> As defined in section 137(1) of the Transport Act 1985.

- 4.5 The authority must assess objections using two criteria – if either is satisfied, the consultation exercise on the plan and scheme cannot legally go ahead (it is not a requirement that both criteria must be satisfied). These criteria are:

### Criteria 1

The combined registered distance of all the qualifying local services operated by objectors in the relevant EP area is at least 25% of the total registered distance of all local bus services operated by all the bus operators in that area and:

- where there are four or more operators in the relevant EP plan or scheme area, at least three are objectors; or
- where there are less than four operators in the relevant EP plan or scheme area, all are objectors.

### Criteria 2

At least 50% of the total number of operators of qualifying local services within the relevant plan or scheme area have objected **and** the combined registered distance of qualifying local services operated by the objectors in the relevant area is at least 4% of the registered distance of all local bus services operated by all the bus operators in that area.

**Note:** If a plan and scheme have different geographical areas then separate determinations of whether sufficient objections are made are required for the plan and the scheme. Operators in scheme or plan areas where they do not operate local services cannot exercise objection rights in those areas. For example, if Anytown Council has two schemes, one covering West Anytown and the other covering East Anytown, then operators operating only in West Anytown cannot object to the East Anytown scheme.

- 4.6 The initial plan must be accompanied by one or more schemes. If the plan receives sufficient objections, neither it, nor the accompanying schemes can proceed to consultation. If the plan does not receive objections but all of the scheme(s) do, then neither the plan nor the accompanying schemes(s) can proceed to consultation. If the plan and at least one of the schemes do not receive sufficient objection, they can proceed to consultation.

### How is registered distance calculated?

- 4.7 As stated above, the regulations specify that it is 'registered distance' that should be used - this is the total distance that the vehicles need to cover to meet the description of the service as set out in the registration held by the traffic commissioner - not the distance actually operated 'on the road' (which will be less due to vehicle breakdowns etc.). Regulations contain powers enabling LTAs to require operators to provide this information for all their registered services that operate within or into the geographical area of the scheme. Alternatively, the LTA can calculate registered distance itself by using the registered particulars. LTAs also have powers to require operators to provide details (or copies of) the particulars for all the registered services operating

within or into the EP area. Calculating registered distance on an individual bus route usually involves a simple calculation of route length x frequency (remembering to calculate both the outward and return journeys and any evening or weekend services). This calculation will need to be repeated for each service registered with the traffic commissioner operating within the geographical area of the EP scheme. Regulations also specify that where services are registered as 'frequent' (a bus every ten minutes or less) and do not therefore include a timetable, then a 10 minutes frequency should be assumed for the purposes of calculating registered distance.

### Requirement to publish objections

- 4.8 The LTA must publish the names of operators making any objections within 14 days of the last day of the period during which objections can be made. The name for each operator must be the name as it appears on the local bus service registration.

### What happens if the plan and scheme attract enough objections that they can't proceed to consultation?

- 4.9 As stated previously, continuous engagement between the LTA and bus operators is key to success, so, hopefully, the LTA will have gained a sufficient steer during the development of the plan and scheme to determine in advance whether individual operators are likely to object to the proposals and negotiate changes that resolve their issues.

However, if sufficient objections are received that prevent the consultation process from going ahead, the authority will need to discuss the package of measures in the plan and/or scheme further with their operators to resolve the contentious issues e.g. by amending them or removing them altogether – then open the revised package to objections once again. **Whilst the authority should seek to resolve as many objections as possible, the legal requirement is that if there are not sufficient unresolved objection to meet either of the objection criteria then the consultation can go ahead.**

### Operator 'gaming'

- 4.10 The operator objection mechanism is an important, necessary and powerful tool that enables individual bus operators to have their reasonable say about the content and viability of individual EP proposals.

Some operators may see this as an opportunity to 'game' the system by registering new services before the EP objection mechanism applies to temporarily increase their influence over it. LTA's should work with the traffic commissioner to monitor registration activity before and after an objection period to determine whether such activity is taking place and by whom.

- 4.11 Such practices are not acceptable for the following reasons:

- Partnership working is predicated on trust between LTAs and individual bus operators. This trust would be severely undermined if an LTA had reasonable evidence to believe that individual operators were not acting in good faith.

- It may convince the LTA that the improvements to bus services required by the BSIP cannot be delivered through a partnership agreement and the LTA may therefore switch to pursuing a franchising assessment instead.
- The Traffic Commissioner may take evidence of such activity into account when determining whether the affected operator met the requirement to be of 'good repute' under the operator licensing rules.
- The CMA may view such activity as an unreasonable attempt to gain influence over the bus market covered by the EP geographical area and investigate.  
**Any LTA that believes it has evidence of 'gaming' should contact the CMA.**
- If operators are proven to have acted in this way, it may affect the application of any DfT funding provided to deliver BSIP outcomes as well as wider Government subsidy.

## 5. Consultation process

### Carrying out the consultation

- 5.1 The mechanisms in the Forum and the principle of continuous engagement between the LTA and their bus operators should identify and resolve any contentious issues – so that the formal objection stage does not raise issues that come as a surprise to the LTA or other stakeholders, or attract sufficient objections to meet either of the two criteria outlined above. Joint working and developing consensus between the LTA, bus operators and other stakeholders is a vital throughout the BSIP delivery process.
- 5.2 Co-development of proposals with a range of stakeholders will also allow for a smoother consultation process. Where a LTA is confident that it has developed proposals with a wide range of relevant stakeholders and that the consultation is unlikely to generate substantive comments, a very short consultation period will be possible. Transport Focus has produced guidance on carrying out consultation exercises – 'Bus service reviews: consulting on changes to local services – a best practice toolkit' and a progress report – these identify key considerations when designing and delivering a consultation exercise and highlights best practice. They can be found here:
- <https://www.transportfocus.org.uk/publication/bus-service-reviews-consulting-on-changes-to-local-services-a-best-practice-toolkit/>
- <https://www.transportfocus.org.uk/publication/bus-service-reviews-consulting-on-changes-to-local-services-progress-report-february-progress-report/>
- 5.3 It is for the LTA to carry out the formal consultation exercise and when doing so they must, as a minimum, include a number of statutory consultees. These are:

- all operators of local bus services that would be affected by any of the proposals;
- organisations that represent local passengers;
- other local authorities that would be affected by the proposals;<sup>26</sup>
- the Traffic Commissioners;
- the chief officer of police for each area to which the plan relates;
- Transport Focus;
- the Competition and Markets Authority (CMA); and
- such other persons as the authority thinks fit.

5.4 Although these are the bodies that must always be consulted, there may be other stakeholders that should be included, if they can play a real part in developing the proposals to deliver BSIP outcomes. LTAs would generally be engaging with such bodies informally already. Where the scheme involves modification to services, LTAs should also consider consulting:

- existing bus passengers on affected services; and
- relevant organisations which are not already involved in the EP process (for example, major local employers).

5.5 Responses to the consultation should be analysed thoroughly and changes made to the proposals if they would improve BSIP outcomes.

## Consulting on multiple schemes

5.6 The consultation process should take place for all schemes that relate to a plan. There is nothing to prevent a single consultation exercise covering a plan and several schemes at the same time – even if some of those schemes will not enter into force together. However, if a scheme is developed after the initial scheme(s) have been consulted on, a separate consultation exercise must be carried out on that subsequent scheme.

# 6. Making a plan and scheme<sup>27</sup>

## Modifications to EP proposals following consultation

6.1 LTAs should engage fully and constructively with their local bus operators and other key stakeholders at the pre-consultation stages so that modifications to the proposals

<sup>26</sup> See section 138F(7), relevant local authorities for these purposes include, Local transport Authorities, district councils in England, National Park authorities, the Broads Authority, London transport authorities and councils in Scotland.

<sup>27</sup> Section 138G of the 2000 Act/ section 9 of the 2017 Act.

are not required as a result of their responses to the consultation exercise. LTAs should know their views beforehand and have amended the draft scheme as appropriate *before* the consultation stage. Once the consultation exercise has completed, the responses have been analysed, and any necessary changes made, the local authority must decide, with input from the operators, whether to ‘make’ the plan and scheme (‘make’ being the legal term for finalising the content of both and then implementing the requirements of the scheme ‘on the ground’).

- 6.2 Hopefully, this will be on the basis of the plan and scheme put to consultation, or, where necessary, a modified version of either that takes into account consultation responses. However, LTAs should bear in mind that any changes to the plan and scheme resulting from the consultation exercise will trigger the operator objection mechanism as set out in paragraph 6.4 below. This will add a further 28 days to the timetable, so changes should only be made if they are necessary and contribute to one or more BSIP outcomes.

### Notice of intention to ‘make’ a plan and scheme

- 6.3 Once that process has completed, the next stage is to inform all operators of local services of the intention to proceed with ‘making’ the plan and scheme. All operators at this stage should be made aware of the full details of what the ‘making’ of a plan and scheme will mean for them. These details can be contained in a letter or email to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated website. This notice, as a minimum<sup>28</sup>, must:

- Contain full details of the plan and scheme (or where to find it);
- Whether it is the intention to modify the EP as a result of the consultation exercise and, if so, **that this will trigger a further operator objection process**;
- State the period within which objections may be made (which must be at least 28 days from the date of the notice).

If it is the LTA’s intention to modify the EP following consultation, the notice should also provide sufficient detail of how and why the EP is being modified so that operators can take an informed decision about whether they wish formally to object.

### Modifying the plan and scheme after consultation

- 6.4 Where essential changes to the EP are required following consultation better to deliver BSIP outcomes, operators of local bus services can object to a modified plan and scheme being ‘made’ – and they can only be made if formal objections from operators do not satisfy either of the criteria listed in paragraph 4.5 above. If the proposals remain unmodified after consultation then there is no need for a further operator objection process.

### What happens after the objection period has elapsed?

- 6.5 If proper engagement has taken place, the authority will have gained a sufficient steer during the post-consultation negotiations on a modified package to determine in advance whether individual operators are likely to object – and, where necessary, can negotiate changes to resolve them. However, in the event that sufficient

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<sup>28</sup> Section 138G(3) of the 2000 Act/ section 9 of the 2017 Act.

objections are received that prevent the further notification process from going ahead, the authority will need urgently to discuss the package of measures in the plan and scheme with their operators, to resolve the contentious issues – then open the revised package to objections once again. However, as with objections made prior to consultation, whilst the authority should seek to resolve as many objections as possible, it does not require all objections to be resolved. The legal requirement again is that if there are not sufficient unresolved objections to meet either of the objection criteria, then the plan and scheme can be made.

## Making the plan and scheme – notice

- 6.6 Once the objection process has been completed and if there are not sufficient objections to prevent the plan and scheme being made, or if the plan and scheme are being made without modifications, the authority can then ‘make’ the plan and scheme. It is for each LTA to determine how to obtain the appropriate internal approval to make the EP – e.g. whether it requires a plenary decision by the full council, a decision made via cabinet report or via the portfolio holder, bearing in mind the need to meet the April 2022 deadline. The date that the plan and scheme are made are for the authority to determine. However, the requirements in a scheme can only enter into force after the scheme is made – so that date must properly take into account the dates from which the requirements in the scheme will enter into force and the statutory 70 day notice period for changing registrations (28-day pre-notification + 42-day notice period<sup>29</sup>). If the authority intends to take over the local bus service registration system from the traffic commissioner<sup>30</sup>, a transitional period will also need to be built into the date that the scheme is made or that individual provisions under it enter into force. Further guidance on LTAs taking over the registration function from the traffic commissioner can be found here:

<https://www.gov.uk/government/publications/the-bus-services-act-2017-local-bus-service-registration-in-enhanced-partnership-areas>

### Notice that a plan and scheme has been made

- 6.7 No later than 14 days after the date on which the plan and scheme was made, the authority must give notice that the plan and scheme have been made. This notice must contain:

- Full details of the plan and scheme or where they can be expected;
- Say whether it has been modified after public consultation.

- 6.8 This notice is to:

- Relevant stakeholders in the plan and scheme area.

It is important that the passengers who use services in the plan and scheme area are made aware that changes to their bus services are on the way, but it is for the LTA to determine what form this notice takes. It could include leaflet drops, posters, newspaper advertisements, web content, and information leaflets (e.g. handed out on the street, bus station or in local shopping centres etc.).

- To all operators that would be affected by the scheme.

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<sup>29</sup> Guidance on these requirements can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705081/PSV353A\\_local\\_service\\_registrations\\_-\\_England\\_\\_except\\_London\\_\\_and\\_Wales.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705081/PSV353A_local_service_registrations_-_England__except_London__and_Wales.pdf)

<sup>30</sup> See section 6E(7) of the transport Act 1985 as inserted by section 12(3) of the 2017 Act

It is very important that all operators whose local services would be affected by the scheme are made aware that they may be required to make changes to their local bus services. Although we would expect that all operators are already aware of what will happen, this cannot be guaranteed. Nor should such notice rely on general publicity as outlined above. The authority should write to each affected operator setting out in detail which requirements of the scheme will affect their services – using the address listed for operator licensing purposes. This notice should detail both area-wide requirements (such as compliance with a multi-operator ticketing scheme) and any requirements applying to individual services – e.g. route level requirements such as a frequency or timing restriction.

- The traffic commissioners

As the scheme will be enforced through the system of local bus service registrations, it is important that the traffic commissioner is given early notice of the making of a scheme – especially if the authority is obliged or has elected to take over the registration system. Of course, this is only a formal notification and we would expect authorities to have discussed these issues with the traffic commissioners much earlier on in the development of the proposals.

## Making more than one scheme

- 6.9 A plan and a number of schemes can be made at the same time and all can be included in a single notice – even if elements of the scheme or the scheme itself have later dates for the individual elements of them to be introduced – and provided that information is included in the notice. However, for any scheme that is made afterwards, these notice requirements apply separately to that scheme as well.

## Public information on the content of the plan and scheme(s)

- 6.10 Once a plan and scheme is made, it is important that bus operators, especially those considering entering the market or existing operators that are varying services, have easy access to comprehensive information about the requirements of an EP. This is especially the case for the EP schemes, which, of course, contain the specific requirements of the EP itself. This information should be readily available – preferably on a website – and presented in a way that enables operators easily to understand what is required of them.

## Adding further EP schemes to an existing EP Plan and Scheme

- 6.11 Any number of new schemes can be added to an existing, made, plan and scheme. For example, it may transpire that delivery of BSIP outcomes in the future requires a new scheme to introduce, say, a multi-operator ticketing scheme. However, it is not necessary to have separate schemes to deliver different elements of the BSIP. An existing scheme can be varied any number of times to include new requirements and there is no limit to how many different requirements or elements an individual scheme can contain. A single scheme could, for example, cover everything from bus priorities, to marketing requirements, to vehicle emission standards, over an entire EP geographical area.

**Note:** Modifying an existing scheme can also use any bespoke variation arrangements that are included in the scheme – See section 7. A brand new scheme

would require undertaking all the procedures for introducing a new EP plan and scheme, including a 'full' public consultation exercise, *so it is usually better to consider varying an existing scheme than introduce a completely new one.*

## 7. Postponing, varying and cancelling an Enhanced Partnership

### Postponement of an EP

7.1 Even after a plan and scheme are made it is possible for an authority to postpone any of the implementation dates specified in the scheme for any elements of the scheme if they think it is appropriate to do so<sup>31</sup>. The dates that can be postponed are:

- The date on which the scheme is to come into operation.
- The date on which a particular requirement is to be imposed under the scheme.
- The date on which any particular facilities are to be provided – such as new bus stops or other waiting facilities.
- The date on which any particular measures are to be taken – such as reduction in the number of parking spaces or parking fees that are under the control of the authority are to be changed.
- The date on which operators are required to comply with particular registration conditions – such as an area-wide or route requirement.
- The date upon which any conditions that must be satisfied prior to a scheme being revoked or varied comes into effect.

**NOTE:** To access new Government funding, LTAs must be delivering their BSIP using either an EP or franchising. DfT reserves the right to withhold Government funding if postponement is used without justifiable cause. In any case, legislation does not allow these dates to be postponed for more than 12 months.

7.2 Before deciding to postpone any element of a scheme listed above, the authority must consult all operators of local bus services that would be affected by the postponement of the scheme in question.

7.3 If an authority, after consulting operators, decides to postpone the above elements of a scheme, the authority must give notice, including the reasons for postponement, not

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<sup>31</sup> Section 138I of the 2000 Act/ section 9 of the 2017 Act

later than 14 days after the decision is made to those listed in section 6 of this document.

## Variation of an EP

7.4 Once a plan and scheme have been made there is nothing to prevent the partnership from varying it<sup>32</sup> - particularly if this is in response to changes required to implement an updated BSIP.

**Note: An EP scheme (but not a plan) can also be varied without following these formal variation procedures.** See paragraphs 7.19-7.25 above.

7.5 A variation can result from a number of reasons:

- Another authority wishes to become part of the plan and scheme because an updated BSIP(s) points to the need for a combined or multi-LTA EP.
- A proposal to extend a ticketing scheme into a surrounding urban or rural area that is within another authority area. Although this will be a decision led by a revised BSIP, when considering varying an EP plan, an authority has a separate legal obligation to consider whether it is desirable to include another authority(s) within the revised plan. If a scheme is varied to include another authority, the new authority becomes an authority for the purpose of the scheme and also becomes legally obliged to deliver any of the facilities or measures in their area that are included in the revised scheme.
- Conversely, one of the requirements of a particular scheme may not be working as well as had been hoped and needs to be varied better to deliver BSIP outcomes.
- If LTAs change the scheme or circumstances change to an extent that they believe the competition test needs to be applied again, they must do so.

7.6 The authority that wishes to vary a scheme cannot do so unless they are satisfied that the scheme, as varied, will contribute to the implementation of:

- The policies set out in the related EP plan or the revised EP plan if it is being varied at the same time as the EP scheme; and
- The authorities' local transport policies (including the BSIP).

7.7 The authority must also be satisfied that the variations to the scheme will:

- Benefit passengers by improving the quality or attractiveness of bus services in the scheme area; or
- Reduce or limit traffic congestion, noise or air pollution.

These are also important considerations when revising the BSIP.

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<sup>32</sup> Section 138K of the 2000 Act/ section 9 of the 2017 Act

### Step 1 – Issue a notice of intention to prepare a variation to a plan or scheme

7.8 As with other stages of preparing and making a plan and scheme, the authority must invite local bus operators to be involved in the preparation of the variation. They should also give other stakeholders, including those that have been involved in the preparation of a plan (if the plan is being varied) and the preparation and roll-out of a scheme (if a particular scheme is being varied) notice of their intention to prepare proposals to vary it. It is important that those stakeholders are involved in the preparation of any variation and fully understand why the authority is proposing it. Changes may be made because a revised BSIP(s) point to the need to change or combine the geographical area of two adjoining EPs. Or it may be because the authority and local operators feel that changes need to be made to a scheme in the light of experience of how the original scheme proposals are working. There is also nothing to prevent an operator or group of operators approaching an authority with a proposal for variation if, for example, they believe it will better deliver elements of the BSIP. There are no conditions on what can be varied. It is up to individual partnerships to decide. In the case of varying a scheme, there is no need to involve operators that will not be affected by the variation – but the LTA would need to include operators that are both directly affected (because it would change or impose new requirements) and those indirectly affected (because the variation has knock-on effects). Alternatively, the LTA may simply consult all operators. The LTA must be satisfied that the variation will contribute to the implementation of:

- The policies set out in the related EP plan (or a varied plan if the plan is to be varied at the same time);
- Their local transport policies. It must also:
- Benefit passengers;
- Reduce or limit traffic congestion, noise or air pollution.

7.9 LTAs must also consider if varying the plan, whether to include or combine that plan with other plans in neighbouring areas.

### Step 2 – Issue a notice that a variation has been prepared

7.10 Once the early discussions have taken place and a draft variation to a plan and/or scheme have been prepared, the next stage is to make all operators of local bus services that would be affected by a variation to a plan or a scheme, aware of what is being proposed so that they can properly take part in the subsequent procedures. This notice must contain:

- Full details of the proposed variation;
- The operator objection mechanism that will apply and the period for making objections (not less than 28 days).

7.11 These details can either be contained in a letter or email (preferably both) to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated website.

### Step 3 - Operator objections

7.12 The next stage is that operators must be allowed to object to the draft variation to a plan and scheme. The notice to operators that a variation to a plan and/or scheme

has been prepared must also contain details of how individual operators can object to the proposals. Any objection should be made in writing and the authority should provide a mail and email address to where such objections should be sent – and acknowledge that an objection has been received. The legislation requires that any objection should be made within the deadline set by the authority – but this deadline cannot be less than 28 days after the date after which the notification was sent. Operators wishing to object to a variation are not required to give a justification for doing so. However, it is hoped that individual operators would raise any concerns that might lead to an objection with the authority before the objection process commences, so that a resolution can be sought.

- 7.13 Any variation of a plan is subject to the statutory objection process. However, as explained in section 4 above, a scheme when it is originally made, can contain its own rules about varying it, which can include an alternative, bespoke objection mechanism. If this is the case, then that mechanism must be used for the purposes of operator objections. However, if no alternative mechanism has been included in the scheme, the statutory requirements will apply. Only the statutory objection mechanism can apply to the variation (or revocation) of a plan. Also note that where an EP scheme is being varied, only those operators that are currently required to comply with that scheme, or would be required to comply with the revised scheme as varied, have the right to object. Operators not currently affected by the scheme and who would also not be affected by the scheme as varied have no right to object.
- 7.14 If the statutory objection mechanism is to apply, the same rules will apply as when objections take place prior to the consultation stage and making of a plan and scheme. Any operator of qualifying local bus services that operates within or into the geographical area of a plan or scheme on the day before the notice under Step 2 above is entitled to object.

#### **Step 4 - Following the operator objection process, issue a public notice of the intention to vary the EP**

- 7.15 If following the operator objection process, the proposed variation of the plan or scheme is to proceed, the authority must give notice to other stakeholders that have been involved in the preparation of a plan (if the plan is being varied) and the preparation and roll-out of a scheme (if a particular scheme is being varied) that they have prepared proposals to vary it. However, all operators of local bus services in the area concerned must be formally notified as well as any other stakeholders, such as passenger groups that were involved in the making of the original scheme. At this stage the Competition and Markets Authority must also be formally consulted

#### **Step 5 – Notice to operators of intention to make the variation**

- 7.16 If the LTA decides to adopt the variation, either as originally proposed or with modifications after Step 4, they must notify local bus operators. This notice must:
- Contain full details of the variation or state where/ how they can be inspected
  - State whether it is a modified version of the original proposals
  - Specify the operator objection mechanism that will apply and the period for making objections.

## Step 6 – Notice of making the variation

7.17 As with other stages of the process, if an authority, after Step 5, decides to make the variation (following the appropriate council approval processes), the authority must give notice, not later than 14 days after the decision is made to:

- Relevant stakeholders in the plan and scheme area.
- To all operators that would be affected by the scheme.
- The traffic commissioners.

7.18 The notice must contain:

- Full details of the variation or state where/ how they can be inspected;
- State whether it is a modified version of the original proposals.

## Faster variation or revocation of an EP scheme using bespoke arrangements<sup>33</sup>

7.19 The EP legislation includes flexibility to introduce new scheme content, amend existing content or revoke parts or all of a scheme using bespoke arrangements and **without the need for following the procedures otherwise required for variation set out above**. Individual partnerships should consider using this flexibility into their EP schemes and the EP template at **Annex A** includes text that provides flexibility to vary the EP scheme in this way. This is for a number of reasons:

- The Strategy requires LTAs to make an EP Plan and Scheme by the end of March 2022. Individual LTAs and their bus operators may not be able to include all the facilities, measures and standards of service that, ideally, they would wish to include in the scheme within that timescale. These provisions allow additional changes or additions to be made to the scheme after that date more quickly than the variation procedure.
- Further proposals and content may be developed later, or existing EP scheme content may need amendment in response to changing BSIP aspirations, as funding is secured and operator confidence builds. Such changes can be made more quickly under bespoke arrangements.
- Schemes may need to be revised at short notice to cater for changing passenger needs as individual areas emerge from the Covid-19 pandemic or because existing EP provisions are not working or need amendment.

7.20 To use this flexibility, the EP scheme needs clearly to:

- Set out where and how the flexibility can be used:
  - It can apply generally to make any changes to the scheme – e.g. in place of the arrangements for formal variation;
  - It can apply only when revoking all or parts of the scheme;
  - It can apply only to specific elements of a scheme – for example, introducing, amending or revoking specific ‘facilities’, ‘measures’ or ‘standards of service’;
- Specify how operators can object to the use of those powers.

7.21 Using this flexibility will still require operators to be able formally to object to specific proposals. However, it is for individual partnerships to decide what that objection mechanism is and explain it in the scheme. For example, it could:

- adopt the statutory objection mechanism as set out in section 4 above that are normally used when the scheme is made, varied or revoked;

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<sup>33</sup> Section 138E of the 2000 Act/ section 9 of the 2017 Act.

- set out a bespoke objection mechanism that is used whenever these bespoke powers are used;
- set out different objection mechanisms that are used when changing particular elements of a scheme;
- Provide some minor variations could be made with little or no support from operators.

7.22 For example, the scheme could specify a mechanism which requires a special meeting of the Forum to agree to it:

*‘On receipt of a request for a variation under this section, [Name of Authority] will reconvene the Forum, giving at least 14 days’ notice for the meeting, to consider the proposed variation. If the proposed variation is agreed by all bus operators and [Name of Authority] representatives present, [Name of Authority] will make the EP Scheme variation within seven working days and publish the revised EP scheme on its website. Operators not expressing a view at the meeting will be deemed to be abstaining from the decision’.*

7.23 Or the scheme could include a simpler and more a more specific objection mechanism, for example, when considering introducing or changing a package of bus priorities on a particular corridor:

*‘The introduction, variation or revocation of bus priority measures on a specific corridor within the geographical area of the EP scheme will require the agreement of all bus operators running local bus services on that corridor at the time’.*

7.24 The flexibility can also be used to insert revised or additional versions of itself. The example text below allows new bespoke variation text to be inserted, providing the statutory objection mechanism is used to agree that text:

*‘Changes to or new flexibility provisions under s.138E of the Transport Act 2000 shall only be included in the EP scheme if they satisfy the statutory objection mechanism as set out in The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017.’*

7.25 The date(s) for variation of a plan – and particularly a scheme – will need to take into account the 70-day rule for registration variations – although the traffic commissioner or the LTA (if it is the registration authority) can decide to grant short notice variations in certain circumstances, if requested to do so by operators.

### **Combining existing individual EPs into a joint or multi-LTA EP**

Future revisions of the BSIP may require existing single LTA EPs to be combined into a larger combined or multi-LTA EP. The most straightforward way to do this would be:

- Develop a multi-LTA EP during initial discussions as set out in section 2 above.
- Vary one of the existing EPs to:
  - increase its geographical area to cover a combined or multi-LTA area:
  - include combined or multi-LTA content in a revised EP plan and scheme(s).
- Revoke the other EPs at the same time as the above variation comes into force.

7.26 These procedures will of course include the requirements that apply to varying or revoking a single-LTA EP plan and scheme.

## Revocation of a plan or scheme

7.27 A plan cannot be revoked without also revoking all the schemes that are connected with it. And all the schemes cannot be revoked unless the connected plan is also revoked. However, a single scheme (if there is more than one) can be revoked without also revoking the other schemes or the plan.

**Note:** An EP scheme (but not a plan) can also be revoked without following these formal revocation procedures. See paragraph 7.34 below.

7.28 The decision to revoke (rather than vary) an EP in its entirety should not be taken lightly. EPs are a key lever for the delivery of BSIPs. Revocation of an EP without putting in place appropriate alternative arrangements for the delivery of BSIPs, (i.e. either franchising or a new EP) will result in a local authority no longer being able to access new Government funding. However, there may be circumstances when it is necessary to revoke one of a number of schemes supporting the delivery of an EP plan and it is also important that the authority and operators are not locked in to a scheme that is clearly failing to deliver the BSIP.

**Note:** If an individual scheme is revoked this should form part of a proposal to improve how the EP delivers BSIP outcomes.

### Step 1 – Give notice of the proposal to revoke the plan and/ or scheme

7.29 The authority should give notice of their proposal to revoke a plan and scheme to all stakeholders that were involved in the previous stages of preparing or varying a plan or scheme. This notice should also be sent to the Secretary of State for Transport.

### Step 2 – Consultation

7.30 After Step 1 the authority must consult:

- Operators of local services that provide local bus services in the plan or scheme area that would be subject to revocation;
- The Competition and Markets Authority; and
- Other persons the authority or authorities think fit. We would also expect LTAs to consult the Secretary of State for Transport, setting out the reasons for revocation.

### Step 3 - Give notice of intention to revoke the plan and/or scheme

7.31 After consultation, if the LTA still wishes to proceed with the revocation, they must notify all the operators of local services of their intention to do so. This notice must, as a minimum, contain:

- The date on which the plan or scheme is to be revoked.
- The authority's reasons for revocation.
- Information on how the objection process will be conducted - i.e. will it operate under the statutory powers or a bespoke mechanism (see paragraphs 7.34-7.38).

- Specify which operators can object to the revocation and what the objection period is – although this must not be less than 28 days from the date on which the notice was sent. Eligible operators will be those that would be able to object to a variation.

#### **Step 4 - Operator objections**

7.32 As with a decision to vary a plan or scheme, local bus operators running local services on the day before a notice to revoke is issued may object to the revocation. For revocation of a scheme, the objection process can either be a bespoke one that is included within the scheme, or, in its absence, the statutory objection process (see sections 4 and 5 of this document). The revocation of a plan must always use the statutory process.

#### **Step 5 – Issue a notice of revocation**

7.33 If they are not prevented from doing so through the objection process, the authority can then decide to revoke a plan or scheme. They must, no later than 14 days after the revocation date, give notice of the revocation to:

- Relevant stakeholders in the plan and scheme area;
- To all operators that would be affected by the scheme;
- The traffic commissioners.

#### **Bespoke revocation arrangements**

7.34 Under s.138E, inserted by section 9 of the 2017 Act<sup>34</sup> - once a scheme is introduced, it may have different bespoke arrangements or agreed triggers for certain things to happen. For revocation, those arrangements would replace the revocation arrangements for the scheme described above. Revocation of the plan must always use the formal revocation procedures.

7.35 Schemes could include provisions for automatic revocation based on metrics. These can be as flexible as they need to be. For example, it could have individual metrics for a ticketing scheme (say, take up of smart) ticketing, for any frequency or timetabling requirements (say, based on the traffic commissioner's current targets), or the effectiveness of individual schemes as a whole (say, based on passenger growth). These can be a simple or complex as are needed – provided they are subject to an operator objection mechanism – and can, again, include things such as variation or revocation happening automatically.

7.36 Alternatively, the EP could be time-limited and start again from scratch to coincide with a planned revision of the BSIP. The essential thing is that these issues are discussed in advance between the authority(s) and the bus operators and, if the authority wishes to proceed, are subject to the applicable operator objection mechanism – the statutory one when the scheme is made and any relevant bespoke one(s) when it is varied or revoked. As stated previously, any changes or revocation of the plan must use the statutory objection mechanism.

7.37 It is important to realise that an authority or individual operators cannot unilaterally terminate an EP. It can only change or end in accordance with the requirements set out in Part II of the 2000 Act and any rules laid down within it or in accordance with any other rules set out in the scheme. That gives clarity to both the authority and the

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<sup>34</sup> See paragraphs 7.19-7.25

operators, both of which may be committing considerable resources to deliver their respective commitments.

- 7.38 The key overall point is that the scheme can set out mechanisms and triggers that would not require either the LTA or the operators as a whole to compel the continuation of arrangements that are failing to deliver the BSIP in one or more areas. What those mechanisms and triggers are will vary from scheme to scheme and needs to be agreed by both sides – which is why the 2000 Act provides so much flexibility.

## 8. Enhanced partnership guidance –

### Competition issues

#### Background

- 8.1 Partnership working between LTAs and bus operators is an effective way of maximising benefits to passengers and delivering the BSIP. These partnerships, in various forms, have existed since the mid-1990s and there have not been any cases where they have given rise to action on competition grounds. However, this does not mean that authorities should be complacent. It is very important that the development of plans and especially schemes are not conducted in a way that that is unfair to particular operators. But a distinction needs to be drawn between what is ‘unfair’ in the development of an EP plan or scheme and what may simply be unpopular with individual operators.
- 8.2 An EP scheme also imposes legal requirements on local bus services using ‘standards of service’ that it applies. Obeying these legal requirements do not breach competition law for the operators concerned – even if it involves joint-working between them, such as on timetabling, that may otherwise do so. An example of unfairness would be an authority dealing with a particular operator or group of operators differently to others that gives those particular operators an advantage. In turn, all bus operators should engage properly with the EP process to deal with this risk. For example, if a small or medium sized operator (SMO) wishes to have the same engagement with the authority as a much larger one, they have a right to do so. Authorities should not engage differently with large operators because, for example, they feel that they can ‘get things done’ more quickly than SMOs.
- 8.3 However, this does not mean that the authority should shy away from content of plans and schemes that may not be popular or have the backing of all operators. A key element of an EP is that the content of schemes and plans require only the majority of operators to agree – via the objection process. This does not mean that any ‘blocking minority’ should be ignored. If an individual operator or group of operators believes that the requirements of a plan or especially a scheme would have serious consequences for their business, they should take that up with the authority at an early stage. It should also be remembered that the authority will need to certify the scheme as compliant with competition law under the existing requirements at Part 1, Schedule 10 of the Transport Act 2000.

## Enhanced Partnerships and competition law

8.4 The CMA recognises that passengers can benefit from effective partnerships between bus operators and LTAs. Such beneficial forms of cooperation can include better integrated networks, multi-operator ticketing schemes, integrated information management and marketing. Although the perceived threat of CMA action still remains a significant barrier to closer partnership working, the CMA does not want LTAs or bus operators to be deterred from introducing partnership arrangements that benefit customers but do not weaken rivalry between operators by unfounded concerns that they might breach competition law.

### *Retaining competition within a planned bus network*

8.5 Through BSIPs, LTAs and their local bus operators will be redesigning local bus networks to:

(a) improve services to passengers by integrating them better – i.e. integration between bus operators and with other forms of transport.

(b) avoid significant over and under provision of services, so that buses are appropriately spread between corridors to ensure a level of services that meets all passenger needs.

8.6 LTA coordination of network planning does not inherently raise competition concerns as long as the approach taken:

- Works in partnership with local bus operators to build on their normal business practice of conducting network reviews and
- uses the EP mechanisms set out in the legislation.

8.7 However, a planned bus network does not require competition between operators to be eliminated. Nor does it require a draconian planning approach along the lines of an LTA determining that, for example, ‘operator A is running too many bus services in this part of the LTA geographical area and should transfer a proportion of those buses to this other geographical area that is less well served by bus services’. Within an EP, it remains a commercial decision for individual operators about what services they offer (subject to EP standards of service). There is also, of course, nothing to prevent operators from entering new markets where the EP negotiations encourage this – particularly if it is on the back of new LTA investment, e.g. in bus priorities.

8.8 Effective planning is about striking an appropriate balance between competition, cooperation, over and under provision and the use of subsidy and EP powers to deliver an overall bus network **that focusses on delivering BSIP outcomes and is in the interest of passengers, not individual bus operators.** The rest of this section provides advice on achieving this.

### *Allowing new entry*

8.9 To ensure that network planning delivers long-term passenger benefits it is important to allow scope for the network to evolve so that it continues to meet passenger needs. This means that new operators need to be able to enter the market and existing operators propose new services to deliver BSIP outcomes. Retaining an ongoing threat of potential competition also plays an important and necessary role in motivating operators to deliver the BSIP, maintain the quality of their services and keeping fare levels competitive. It also encourages innovation by potential competitors so that BSIP outcomes are better delivered. LTAs should therefore ensure that network planning under an EP allow for new and revised services. To allow for the necessary flexibility, CMA guidance to LTAs is that:

- the network planning process should allow for rival operators to run services in competition with an existing operator where this does not result in negative outcomes such as overprovision.
- it is particularly important for the EP agreement to allow the provision of services to evolve if there are already restrictions in place due, for example, to congestion and pollution concerns. For example, might a pollution issue on an individual route be ameliorated or negated by a new operator entering that market with an all-electric fleet?
- the commercial impact on an incumbent operator's services should not form part of the assessment of whether another operator could establish a new service. This should solely consider passenger needs as set out in the BSIP and the subsequent EP plan.

### *Service integration*

8.10 BSIPs emphasise the importance of local buses presenting a coherent and integrated network to passengers. This can be achieved in a number of ways, using the EP powers, as set out in this document. Integration with other modes such as light and heavy rail can be achieved by an EP requirement that any bus services serving the relevant bus stops must integrate with the rail timetable. The partnership can also negotiate a through ticketing and passenger information sharing arrangement with other modes.

8.11 Individual bus services can integrate their timetables as well. For example, a supported village bus service can integrate with a commercial 'mainstream' service heading into town. To do this, the EP specifies that the stop served by both services must integrate their timetables. Two commercial bus services can also integrate their timetables in this way. The EP can also require both operators to offer a single, integrated ticket for the through journey and comprehensive real-time information.

### *Dealing with overprovision of services*

8.12 A key outcome of BSIPs is that they should address the overprovision of local bus services. An EP should not allow a 'free for all' – e.g. for example, with many operators running competing services on individual routes all jostling for the same passengers by arriving at stops at the same time and leaving large gaps in service in-between.

8.13 But that does not mean that competition should be eliminated and a service along that route provided by only one operator. In the example above, overprovision could be dealt with by using EP powers to regulate the headways (gaps between buses), coupled with an attractive multi-operator ticket. This could deliver an accessible, attractive and frequent service on those routes.

8.14 However, where the partnership concludes there are simply too many buses on a particular route – either generally or at particular times of the day – it may be necessary to use EP powers to impose limits on frequency.

8.15 An example of how to address overprovision is as follows:

### Example 1

- A route has two operators running buses on it. Both operator A and B run two buses an hour.
- An EP requirement is introduced requiring only two buses an hour on that route.
- The existing operators can comply with this requirement by each voluntarily agreeing to cut one bus from their schedule.

### Example 2

- A route has two operators running buses on it. Operator A runs three buses an hour and operator B runs one.
- An EP requirement is introduced requiring only three buses an hour on that route (a 25% reduction). The existing operators can comply with this requirement in a number of ways:
  - Operator A can agree to cut a bus from their schedule.
  - Operator B can agree to stop running services on that route.
  - Operator A and B can agree each to apply a 25% reduction to their respective schedules.

**In both examples, the operators are working together but the fact that this is being done to meet an EP requirement should reduce the risk of breaching competition law** (see further information on qualifying agreements below).

8.16 But the basic principle of how bus operators comply with a frequency limitation imposed by an EP is that they should ideally reach a voluntary agreement between themselves on how to change their respective schedules to meet the EP requirement. ***If the operators fail to do this, the EP powers require all the affected operator's services on that route to be cancelled and that service (complying with EP requirements) to be provided under contract to the LTA. So it is in all operators' interests to reach a voluntary agreement if they wish to continue to provide commercial services.***

Separate further guidance on how those powers work can be found here:

<https://www.gov.uk/government/publications/the-bus-services-act-2017-local-bus-service-registration-in-enhanced-partnership-areas>

## *Dealing with under-provision of services*

8.17 LTAs already have powers to subsidise bus services that are not commercially viable but they consider 'socially necessary'. These can be used:

- to provide bus services where none currently exist – e.g. in rural areas;
- provide services at times that are not commercially viable – e.g. evenings and weekends; or
- top up existing commercial service provision to meet BSIP outcomes.

### **Example 1**

8.18 On an individual corridor, the BSIP suggests that four buses an hour are required in either direction during the day. However, the commercial operator(s) running commercial services on that corridor say that current patronage only supports a maximum of two buses an hour on a commercial basis.

8.19 In this case, the LTA can tender (or use 'de minimis') for the provision of the extra buses and slot them into the existing timetable (e.g. in compliance with a scheme headway requirement). Of course, if patronage improves to support more commercial services, the LTA can consider framing the tender with the flexibility to reduce the level of supported services or stop running them altogether.

### **Example 2**

8.20 The commercial services on a particular corridor stop running at 6pm because patronage does not support later evening or night services. However, the BSIP suggests that services should run until midnight. In this case, the LTA can subsidise those evening and weekend services.

## *Cross-boundary services*

8.21 Passenger needs do not respect LTA boundaries and individual LTAs and operators should ensure that the EP deals effectively with cross-boundary services in a way that does not unfairly disadvantage particular passenger groups. One example might be where a fare subsidy in a EP area allows passengers boarding at or close to the EP boundary to travel more cheaply than using a competing deregulated service running just wholly outside the EP area. Or it may require passengers to pay higher fares on services running across the boundary.

8.22 The EP legislation is very flexible in allowing this to be addressed. For example, one way to deal with this would be for, say, **LTA 1** to have a joint EP Plan/ BSIP with neighbouring **LTA's 2** and **3**. This would allow for a joint EP scheme that dealt specifically with cross-boundary services.

Another solution might look as follows:

- **LTA 1**– The EP Plan and scheme covers their entire geographical area including a fare subsidy to the geographical boundary.
- **LTA 2 and 3** – They each have a specific EP scheme that mirror **LTA 1** fare provisions covering only those routes on which cross-boundary services with **LTA 1** operate.

8.23 In this case, the practical effect of those three EP schemes together is that it looks like an octopus – with the LTA1 fare subsidy extending along specific corridors from LTA 1 into the LTA 2 and 3 areas. This may mean that LTA 2 and 3 need to fund the LTA 1 fares subsidy on their part of those cross-boundary services – but passengers travelling in either direction buy a single ticket for the whole of their cross-boundary journey. It also does not prevent LTA 2 and 3 from having their own specific EP schemes that cover subsidised fares on the rest of their own geography.

The main point is that whether individual LTAs opt for single or joint EPs, BSIP outcomes should not prejudice cross-boundary passengers.

### *Risk of geographic segregation*

8.24 There is a risk that operators expressing an interest in running new routes as part of network planning might increase geographic market segregation. For example, existing operators in those areas might feel threatened by a new entrant and retreat to ‘core territories’. This would reduce the effectiveness of potential and actual competition in delivering BSIP outcomes. An EP does not prevent new operators from operating on new routes and competing with existing operators on them – providing they meet any applicable EP requirements. If, however, LTAs suspect there is evidence of explicit market sharing or anti-competitive agreements between bus operators within an EP area, there may be scope for action under competition law – as there would be in a wholly deregulated market. Existing operators should not react in this way to a new entrant or try to reach an anti-competitive agreement with them.

## The Schedule 10 Test

8.25 All the arrangements and considerations outlined above that are agreed with operators as part of LTA/operator negotiations result in the LTA needing to subsequently weigh up whether they are collectively justifiable because they reasonably improve services to passengers (by delivering BSIP outcomes) at the expense of open competition. That is the purpose of the ‘Schedule 10 test’ covered in this section.

8.26 Competition law as it applies to bus services stem from the Competition Act 1998 but is more specifically applied to certain bus-related functions under Part 1, Schedule 10 of the Transport Act 2000.

## Role of the authority

8.27 As stated above, all EP schemes exist within a deregulated bus market. It is not a franchised arrangement where the authority control all aspects of bus services, from routing of individual services through to ticketing. The effect of all EPs – especially

EP schemes – is to impose a suite of restrictions, set out in the scheme, on the deregulated bus market in that scheme’s geographical area to deliver BSIP outcomes.

8.28 The role of the authority is to ensure, for all schemes, that an appropriate balance is struck between:

- Delivering tangible improvements to passengers ‘on the ground’ through the EP scheme;
- Imposing any necessary restrictions on the deregulated bus market.

The relevant tests are discussed in more detail below.

8.29 This balance is important and before making or varying a plan or scheme the authority should undertake a formal assessment about whether, in their opinion, this balance has been achieved. This can be simply a document, produced by the LTA, that explains what restrictions are being placed on the deregulated market and why, in the opinion of the LTA, that those restrictions achieve the balance set out in paragraph 8.28 above.

8.30 The authority therefore has the major role in monitoring and shaping the local bus market on behalf of local people in its area to deliver the BSIP. It needs to understand the role of competition rules in this process, and act as the facilitator in delivering necessary cooperation without unnecessarily restricting the underlying potential for beneficial competition. For example, operators are well placed to flexibly adapt services to meet changes in passenger requirements. Actual or potential competition motivates operators to provide a high-quality service offering value for money. If this process is unreasonably impeded, then there is a risk of detriment to passengers. So it is very important that the effect of a scheme on a SMO, or a prospective operator, is fully taken into account.

8.31 Some element of a scheme – particularly route requirements – may require two or more operators to co-operate with each other. For example, it may require them to co-ordinate timetables. Such co-operation requires a ‘qualifying agreement’ between the operators concerned. These agreements require the formal approval of the authority that any such agreement meets two tests:

- It must be in the interests of passengers using local services in the EP scheme or wider plan area; and
- It must not impose restrictions that are not indispensable to achieving the plan or scheme objectives.

8.32 Clearly, if the operators are co-ordinating timetables in order to meet a legal requirement imposed by an EP scheme, both of these tests should be met. As an EP scheme cannot prevent new operators from entering the market (provided they meet the required standards and do not breach any restrictions), there should not be any issues relating to LTAs or a group of operators (or both) seeking to ‘stitch up’ the market. Even where a scheme imposes a frequency restriction on a particular route, a new operator must be given access to that route, or all the existing registrations on that route must be cancelled and the entire route put out to competitive tender by the LTA – see paragraph 3.63 above.

8.33 So it is clear that the overall role of the authority is to ensure that any restrictions introduced into what remains a deregulated market are appropriate to deliver the BSIP, all EP plans and schemes should include a section in their documentation that deals with relevant competition issues and sets out:

- a. What elements of the scheme may give rise to competition issues and what those issues are;
- b. How the authority has addressed or proposes to address those issues to ensure that restrictions are appropriate;
- c. Detail any competition issues from individual operators that remain unresolved – e.g. because they were not sufficient to meet either of the operator objection criteria that otherwise prevent a plan or scheme being made or varied.

8.34 In assessing what elements of the plan and scheme may give rise to competition issues, the authority may wish to consult the CMA's Competition Impact Assessment guidelines in order to identify how a policy may affect the suppliers and consumers in any given market.

8.35 In the context of an EP, concerns which may arise include any aspects which:

- permit the unnecessary exchange of sensitive information;
- reduce incentives on operators to independently set their own fares (where fares subsidy is not provided and not including scheme requirements on the price of a multi-operator ticket);
- which result in operators sticking to given routes and areas; and
- which unreasonably reduce the chance of any entry or expansion.

8.36 Other issues may also be relevant to the competition assessment. This is to maintain the benefits of competition - i.e. that operators are incentivised to maintain an efficient and effective service at reasonable fares to attract and retain passengers.

8.37 Authorities should ensure that the EP scheme is reviewed if they believe that a change of circumstance means that their assessment of the competition impacts would be materially different. For example, if there was reason to believe competition would work better given the potential entry of a new and well-resourced competitor, or operators changing tactics to become more customer-responsive and innovative. Or, potentially, the benefits of the EP in delivering the BSIP may not be as strong as originally anticipated and require change.

## Summary of Schedule 10 procedures

### Part 1 test

8.38 Making or varying an Enhanced Partnerships and any multi-operator ticketing scheme that is a part of them, are subject to the test in Part 1 of Schedule 10 to the Transport Act 2000. This test has three elements:

- a) is there likely to be a significantly adverse effect on competition? If yes:
- b) is the exercise of the function being done with a view to securing one or more of the three purposes specified (known as 'bus improvement objectives'), either:
  - to secure improvements in the quality of vehicles or facilities used to provide local services,
  - to secure other improvements in local services of benefit to users of local services, or

- to reduce or limit traffic congestion, noise or air pollution; and

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

**8.39 As these objectives are at the core of the BSIP developed jointly with operators, we would expect them to be satisfied, but they should still be assessed on a case-by-case basis.**

Example text confirming that the LTA is satisfied that the competition test has been met is included in the EP template at **Annex A**.

### **Part 2 test**

**8.40** The Part 2 test is required where there is an agreement between bus undertakings (called a qualifying agreement) which 'has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities'<sup>35</sup>.

**8.41** In this context, if, for example, an EP, to deliver a BSIP outcome, imposes a route restriction that requires a degree of cooperation between operators, this arrangement will be a 'qualifying agreement' made under Part 2 of Schedule 10 of the 2000 Act. This might be needed because, say, two or three operators on a route need to co-ordinate timetables, so that a headway or frequency restriction imposed by the EP on that route is complied with. Or it may be required if a new operator wishes to run services on the route that has a frequency restriction and the existing ones need to co-ordinate with the new operator to ensure all their services, taken together, comply with the route restriction.

**8.42** Where such arrangements 'prevent, restrict or distort competition' they are allowed if certain requirements are satisfied. Such agreements must be certified by the LTA on the following basis:

- a. the agreement must be in the interests of passengers using local services in the area of the local authority/ies concerned; and
- b. it must not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the bus improvement objectives (in this case compliance with the relevant route requirement).

In addition, the agreement must contribute to the attainment of one or more of the bus improvement objectives, must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and must not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question.

**If such an agreement is required to deliver BSIP outcomes we would expect these tests to be met but they need to be considered on a case by case basis.**

**8.44** An example qualifying agreement (that is already publicly available) is at **Annex B**

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<sup>35</sup> Paragraph 18(3)(a), Part II of Schedule 10 to the Transport Act 2000.

## Reducing operators' risk of action on competition grounds

- 8.45 As commercial undertakings, bus operators are subject to normal competition law provisions to prevent practices that harm passengers' interests, such as colluding to raise prices or geographic market sharing. If evidence is found of such behaviour, the CMA has powers to, among other things, impose fines on operators of up to 10% of group turnover. However, legislative mechanisms are in place to enable certain forms of closer partnership working between the authority and bus operators. The requirements of EP schemes are imposed by the authority as conditions to be met by local bus service for the service to be registered. **This means that bus operators that are, for example, co-ordinating timetables, or accepting tickets, in order to comply with a EP scheme requirement should be at a reduced risk of breaching competition law but this needs to be considered on a case-by-case basis**
- 8.46 From the above, it is clear that both authorities and operators need to remain aware that the requirements of competition law apply throughout the development and implementation of a plan and scheme. Both sides should therefore act fairly to all other parties and the authority has the responsibility to ensure that this happens in practice and should generally seek to resolve competition issues. The CMA can help where issues arise.

## Contacting the CMA

- 8.47 The role of the CMA is to determine whether anti-competitive practices – which most partnership arrangements involve – are justified. If LTAs and/ or their bus operators believe or are not sure whether specific proposals raise competition issues, they should contact the CMA. **Operators should not contact the CMA unless they have explored their issues either in the Forum or confidentially with the LTA first.**
- 8.48 However, if individual operator(s) remains concerned with the effect of EP proposals on the viability of their business, *they should take this up with the CMA*. Operators should not shy away from complaining to the CMA for fear of upsetting the local authority – it is an important safeguard and will not, for example, 'tar' your reputation with the traffic commissioners. Nor does raising concerns with the CMA involve a complex administrative or legal process. A simple letter setting out the operator's detailed concerns, the resulting harm that you believe will occur to competition and/or consumers and how they relate to specific plan or scheme proposals is sufficient as a first step. However, any operator intending to make a complaint to the CMA should consider informing the authority beforehand so that any subsequent inquiries by the CMA do not come 'out of the blue'. A complaint to the CMA does not necessarily mean that any action will be taken. It is for the CMA itself to decide what action (if any) is appropriate in response to any complaint.
- 8.49 Details of how contact the CMA with a complaint can be found at:  
<https://www.gov.uk/guidance/tellthe-cma-about-a-competition-or-market-problem>

## Setting the price of a multi-operator travel card (MTC) under an enhanced partnership scheme

- 8.50 An EP MUST include a requirement that bus services operating within a geographical area specified in the scheme must accept a multi-operator ticket. The scheme can also specify the price the bus operators charge for a multi-operator travelcard.
- 8.51 Any pricing included in a scheme must be subject to the operator objection mechanism. Nor can a scheme set the price of multi-operator individual tickets (i.e. multi-operator tickets that the participating operators have agreed to themselves but which do not include all operators in the EP area) nor single operator tickets: operators must retain the ability to make decisions about pricing their own services.

### Governance

- 8.52 It is especially important where an EP scheme proposes to mandate a multi-operator travelcard and set its price that appropriate governance arrangements are put in place. Some of these arrangements are already mandated in the processes and arrangements for developing and maintaining EPs under the 2017 Act – and further explained elsewhere in this guidance. However, particular regard should be given to developing specific arrangements for the multi-operator travelcard scheme. Some key considerations are outlined below:

#### Have clear objectives

- 8.53 Clear objectives for the scheme are essential. These should be focused on providing good value and convenient multi-operator products to passengers.
- 8.54 Remember, such schemes may grow demand for bus services. This is also likely to act as one of the key factors that determine price.

#### Information sharing

- 8.55 In agreeing the pricing and structure of multi-operator travelcards, the increased collection and sharing of data must not lead to anti-competitive information sharing between individual operators. For example, existing public information can be shared, for example current fare levels, but not future fare intentions<sup>36</sup>.

#### Pricing

- 8.56 It is important that the pricing strategy of the multi-operator travelcard is able to respond appropriately to changes in the bus market. As explained elsewhere, a scheme may include particular arrangements for varying or revoking the scheme or a part of the scheme. In this context it could be used to provide particular arrangements for changing the price of a multi-operator travelcard after the scheme has been introduced. This might require, for example, the price of a multi-operator travelcard to be changed by using a bespoke objection mechanism that does not require a consultation exercise. This would allow the price to vary as needed, whilst still

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<sup>36</sup> See para 4.9 of the block exemption guidance

allowing operators to object. This would also allow new operators that had entered the market after the price was set to participate in any setting of a revised price.

8.57 The size and structure of the ticket zones can also affect the price of the ticket. Tickets with very wide geographic coverage may lead to operator calls to increase the cost of that multi-operator travelcard over single-operator tickets covering a smaller geographic area. Individual schemes should therefore consider how the size and structure of zones will affect pricing. The mechanism to be used when determining the price of a multi-operator travelcard is for individual partnerships to determine and prices should be set in the least restrictive way possible. The multi-operator travelcard price should not be mechanistically linked to the fares of any of the participating operators. It is, however, acceptable to sense-check the proposed price against single-operator products in the market and take a view on whether the price suggested is competitive and reflective of the local conditions.

8.58 One potential mechanism was set out by the Competition Commission in their 2011 investigation into the local bus market<sup>37</sup>. Appendix 15 of that document sets out how the price of a multi-operator travelcard scheme would be built up according to the following framework:

Multi-operator ticket fare = average or median single fare x  
estimated ticket usage x discount for a multi-journey ticket.

8.59 The CMA believe using such a framework for pricing increases the transparency of how prices of multi-operator travelcards are set and of the relevant information used to determine these prices. This framework is not intended to be applied as a mechanistic formula, but to be used as a way of facilitating decisions about an appropriate level of pricing. Such decisions should be taken at a local level in accordance with the EP governance arrangements outlined elsewhere in this guidance.

8.60 Annex B of the 2013 DfT guidance on multi-operator ticketing ('Building Better Bus Services: Multi-Operator Ticketing')<sup>38</sup> also provides detailed advice on how to apply this framework in practice.

## Annex A

### Enhanced Partnership Scheme Template

*[This will be inserted into this document as soon as possible].*

## Annex B

### Template qualifying agreement

**NOTE:** This template is an anonymised version of a real qualifying agreement that has been publicly available since 2011 and is included in this guidance for completeness. It has not

<sup>37</sup> [http://webarchive.nationalarchives.gov.uk/+/http://www.competitioncommission.org.uk/inquiries/ref2010/localbus/pdf/00\\_sections\\_1\\_15.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.competitioncommission.org.uk/inquiries/ref2010/localbus/pdf/00_sections_1_15.pdf)

<sup>38</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/141874/multi-operator-ticketing-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141874/multi-operator-ticketing-guidance.pdf)

been updated and is included for information only as a guide to format and content. Individual agreements will require independent legal advice.

# **Qualifying Agreement**

(within the meaning of Schedule 10 of the Transport Act 2000 as amended by Schedule 2 of the Local Transport Act 2008)

**Part A – Certificate of the Local Authority**

**Part B – Agreement between the Parties**

**Part C – Timetable of the services described in Part B**

**Part D - Multi-operator individual ticket agreement**

**PART A**

**Local Transport Act 2008 - Agreement to (i) Co-ordinate Bus Timetables and (ii) enter into a multi-operator individual ticket agreement**

[1](#)

**(Certified in accordance with paragraph 18(3) (b) of Schedule 10 to the Transport Act 2000 )**

This is a certificate provided by

**[Name of authority]**..... (Name of Authority) (the “**Authority**”)

The Authority certifies that, having considered all the terms and effects (or likely effects) of the proposed agreements set out in Parts B, C and D between

**[Name of operator]**..... (Name of Operator)

And

**[Name of operator]**..... (Name of Operator)

it is of the opinion that each of the agreements meet the requirements of paragraph 18 (4) of Schedule 10 to the Transport Act 2000 in that each (a) is in the interests of persons using local bus services within the area of the authority, and (b) does not impose on the above named operators restrictions that are not indispensable to the attainment of the Authority’s bus improvement objectives.

Signed.....(**OFFICER NAME**)

Position.....

On behalf of **[Name of LTA]**..... (Name of Authority)

Date.....

## Local Transport Act 2008

### Agreement to Co-ordinate Bus Timetables

This is a voluntary agreement to co-ordinate the timetables of certain bus services.

The parties to the agreement are:

1. **[Name of operator]** .....

Of [Address]

Operating service number [insert]

Between [service starting point] and [service termination point]

And

2. **[Name of operator]**.....

Of [Address]

Operating service number [insert]

Between [service starting point] and [service termination point].

The timetable of the combined service, showing the journeys which are the subject of this agreement, is appended (Part C). Each party has sole responsibility for operating those journeys identified as being provided by him.

This is the whole agreement between the parties in respect of the provision of these services on the basis of a co-ordinated timetable.

It will commence on [date] PROVIDED the Authority (as defined in Part A) has first completed the certification as set out in Part A in accordance with paragraph 18(3)(b) of Schedule 10 to the Transport Act 2000.

This agreement may be terminated by either party giving 6 months notice in writing to the other, at the address shown above.

Signed.....on behalf of [Name of operator]

Date.....

Signed.....on behalf of [Name of operator]

Date.....

**PART C**

**Local Transport Act 2008**

**The Co-ordinated Bus Timetables**

**PART D**

**Local Transport Act 2008**

**Multi-operator individual ticket agreement**

Subject only to:

- (i) Part B above being duly completed by each of [Name of operator] and [Name of operator]; and

- (ii) the certification at Part A above being duly given by the Authority (as defined in Part A) in accordance with paragraph 18(3)(b) of Schedule 10 to the Transport Act 2000;

[Name of operator] and [Name of operator] shall enter into the Multioperator individual ticket agreement in the form annexed.

Affix agreed form  
ticketing agreement  
here

**Multi-Operator Individual Ticket Agreement**

**made between**

**[Name of operator]**

**and**

**[Name of operator]**

**Dated [Insert]**

**THIS AGREEMENT** is made on the 2011 **BETWEEN:**

- (1) [operator name and address]; and
- (2) [Operator name and address]

(together the "**Operators**" and each an "**Operator**").

## **BACKGROUND**

- A. The Operators are entering into this Agreement for the purposes of providing for members of the public a multi-operator individual ticket on the Route specified in Schedule 1 which shall entitle the holder of that ticket to make the journey on the Route (or any part of it) on the Services of any of the Operators specified in Schedule 1 (the "**Scheme**").
- B. The Operators intend for this Agreement to comply with the terms of the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (as amended and extended) (the "**Block Exemption**").

**IT IS AGREED** as follows:

### **1. 1INTERPRETATION**

1. In this Agreement and the Schedules:

- a. words and terms shall have the meaning set out in Schedule 2;
- b. the headings in this Agreement are for convenience only and shall not affect its interpretation;
- c. references to a clause, Schedule or paragraph are to a clause in or a Schedule to this Agreement or a paragraph of such a Schedule;
- d. the Schedules to this Agreement shall have the same effect as if contained in the body of the Agreement, and any reference to this Agreement shall include the Schedules. If there is a conflict between the terms of this Agreement and any terms set out in a Schedule, the terms of the Schedules shall prevail;

- e. any reference in this Agreement to any statute shall include references to any statutory modification or consolidation of it or any re-enactment that supersedes it from time to time, and to any regulation or subordinate legislation made under it (or under such a modification, consolidation or reenactment);
- f. reference to the plural shall include the singular and vice versa, and reference to one gender includes reference to all genders. Any reference to a person shall be to all legal persons of whatever kind and shall include incorporated and unincorporated persons.

**2. DATE OF THE AGREEMENT**

This Agreement shall come into effect on the date written at the head of this Agreement and shall continue in force until being terminated in accordance with its terms.

**3. TERMS GOVERNING THE SCHEME**

The Operators shall comply with the terms and conditions set out in Schedule 2.

Schedule 1

Details of the Scheme

Route:

Origin Point	Destination Point

Services:

Operator	Service	Principal places served

--	--	--

Tickets:

<b>Ticket type</b>	<b>Period of validity</b>	<b>Issuer</b>

Commencement Date of the Scheme: [Date].

## 1. DEFINITIONS

1. The following words shall, unless the context otherwise requires, have the following meanings:

**"Block Exemption"** has the meaning given to it in Recital (B) above;

**"Bus Service"** has the meaning given to it in the Block exemption;

**"Commencement Date of the Scheme"**

means:

(a) in respect of the original parties to this

Agreement, the date specified in Schedule 1; and

(b) in respect of any new operators joining the Scheme, the date determined

in accordance with clause 3.3;

**"Deed Adherence"**

means a deed entered into by any Operator joining the Scheme substantially in the form set out in Schedule 3;

**"Expiry Date"**

means the latest date on which the Tickets issued under the Scheme prior to termination in relation to, or withdrawal by, an Operator, expires;

**"Multi-operator Individual Ticket"**

means a ticket (or tickets) entitling the holder, where a particular journey could be made on Bus Services provided by any of two or more operators, to make that journey or any part of it on whichever service the holder chooses;

**"Operator"**

means each of the parties to this Agreement;

**"Route"**

means the route between an origin and

destination point on which the Tickets will be available or accepted, details of which are set out in Schedule 1;

**"Scheme"** has the meaning given to it in Recital (A) above;

**"Services"** means the services of each Operator, operating over the Route, details of which are set out in Schedule 1, as amended by any Deed of Adherence;

**"Tickets"** means the tickets available under the Scheme as set out in Schedule 1, as amended by any Deed of Adherence;

**"Traffic Commissioner"** means the traffic commissioner(s) for the traffic area(s) in which the Services are operated.

## 2. GENERAL OBLIGATIONS

1. Each Operator undertakes to each other Operator as follows:

- a. from the Commencement Date of the Scheme until the earlier of the Expiry Date or the termination of the Agreement under clause 7.3, to accept each other Operators' valid Tickets at all times on its Services;
- b. to take reasonable steps to promote the benefits of the Scheme to the public;
- c. at all times to insure and maintain insurance to cover its liabilities (including without limitation the indemnity contained in clause 9) under this Agreement (howsoever arising);
- d. to observe and perform all or any of the obligations and undertakings imposed upon it under the terms of this Agreement;
- e. to take all reasonable care in the operation of the Services and to ensure the safety of passengers; and
- f. to comply with, and in particular operate the Services in accordance with, public transport and general legislation and the relevant particulars registered with the Traffic Commissioner.

## 3. ADMISSION OF NEW OPERATORS

1. Any operator operating Bus Services along the Route who is not a party to this Agreement may apply to join the Scheme at any time by delivering an executed copy of the Deed of Adherence to each of the Operators.
2. In accordance with the Block Exemption and the related CMA Guideline, the Operators may refuse to allow an operator to join the Scheme if the Operators have objective, transparent and non-discriminatory reasons for doing so, and the Operators notify the operator of those reasons within 7 days of receipt of the Deed of Adherence.
3. The Commencement Date of the Scheme in respect of any new Operator joining the Scheme under this clause 3 will be 7 days after delivery of the executed Deed of Adherence.

#### 4. **COMPLIANCE WITH BLOCK EXEMPTION**

1. Nothing in this Agreement shall:
  - a. have the object or effect of directly or indirectly:
    - i. limiting the variety or number of routes on which any Operator provides or may provide Bus Services;
    - ii. limiting the freedom of the Operators to set the price or availability of, the fare structure relating to, or the zones or geographical validity applicable for, any ticket entitling the holder to make a journey solely on its own Bus Services;
    - iii. limiting the frequency or timing of any Bus Services operated by any Operator;
    - iv. facilitating an exchange of information between the Operators other than information which is directly related and indispensable to the effective operation of the Scheme (if any); or
    - v. fixing a price at which the Tickets (or any of them) are offered for sale; or
  - b. prevent the Operators from participating in any other ticketing scheme.

#### 5. **REVENUE**

The Operators agree that they will each retain exclusively all revenue received by them from the sale of the Tickets, consistent with the requirements of the Block Exemption.

#### 6. **WITHDRAWAL FROM SCHEME**

1. Any Operator ("**the Withdrawing Operator**") has the right to withdraw from the Scheme on giving the other Operators 28 days notice in writing.

2. At the expiration of the 28 day notice period, Schedule 1 to this Agreement (as amended by any Deeds of Adherence) will be deemed amended as required to delete the Services and Tickets provided by the Withdrawing Operator.

## 7. TERMINATION

1. If:
  - a. any other Operator commits any material breach of this Agreement and fails to remedy such breach within 28 days of the service of a notice requesting the same to be remedied; or
  - b. any other Operator ceases to carry on any Services operating along the Route; or
  - c. the financial position of any Operator is such that either that Operator, its directors, shareholders or creditors take or are entitled to take steps to institute formal insolvency proceedings with respect to the Operator of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if that Operator is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986,

any Operator may terminate this Agreement insofar as it relates to the rights of the Operator in default ("**the Defaulting Operator**").

2. Schedule 1 to this Agreement (as amended by any Deeds of Adherence) will be deemed amended as required to delete the Services and Tickets provided by the Defaulting Operator.
3. The Agreement may be terminated by agreement between all Operators if the Operators agree that there is no longer valid reasons for continuing with the Scheme.
4. The termination of this Agreement under this clause 7 or the withdrawal of an Operator from the Scheme under clause 6 shall be without prejudice to any obligations or rights of any Operator which have accrued prior to such termination or withdrawal and shall not affect any provision of this Agreement which is expressly or by implication provided to come into effect on or continue in effect after such termination or withdrawal.
5. Clause 2.1(a) shall survive the termination of this Agreement against a Defaulting Operator under clause 7.1, and a Withdrawing Operator under clause 6, until the Expiry Date.

## 1. CONSEQUENCES OF WITHDRAWAL OR TERMINATION

1. A Withdrawing Operator agrees from the date the notice is given under clause 6.1 not to offer for sale any Tickets that will expire after the 28 day notice period.
2. A Defaulting Operator agrees from the date of termination to immediately cease offering for sale any Tickets.
3. All Operators who continue to be bound by this Agreement agree, from the expiration of the notice period under clause 6.1 or the date of termination under clause 7.1, not to offer for sale any Tickets that allow passengers to travel on the Services of the Withdrawing Operator or the Defaulting Operator, as the case may be.
4. All Operators who continue to bound by this Agreement agree to publish a notice informing the public of changes to the Operators participating in the Scheme:
  - a. in the case of withdrawal of an Operator under clause 6.1, within the 28 day notice period;
  - b. in the case of termination of the Agreement against an Operator under clause 7.1 or termination of the Scheme by agreement under clause 7.3, as soon as reasonably practicable.

## 2. **LIABILITY**

1. Each Operator shall be solely liable for, and shall indemnify each other Operator in respect of, any liability, loss, damage, claims or proceedings whatsoever arising under any statute or at common law in respect of damage to property or personal injury or the death of any person (including without limitation the carriage of any passengers) arising out of or in the course of or caused by the performance or non-performance by such Operator of his obligations under this Agreement, unless due to any act or neglect of any other Operator or any person for whom they are responsible.
2. The liability of each Operator to third parties will be governed by statute or common law as limited by each Operator's Conditions of Carriage or such other contract as is in place between the Operator and such third parties. No Operator shall have any liability to any other Operator for any breach of any Conditions of Carriage.
3. No Operator shall be liable in any circumstances for any indirect, special or consequential loss (including loss of anticipated profits or business, damage to goodwill or third party claims) howsoever arising either from breach or nonperformance of any of its obligations under this Agreement, or from its withdrawal from the Scheme or termination of the Agreement.

## 3. **GENERAL**

1. The failure or delay by any party in any one or more instances to insist upon strict performance or observance of any one or more of the terms of this Agreement or to

exercise any remedy, privilege or right under this Agreement shall not be construed as a waiver of any future breach or right to enforcement of such terms or to exercise such remedy, privilege or right.

2. No party may assign or charge any of its rights or the benefit of all or part of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of the other Operators (such consent not to be unreasonably conditioned, withheld or delayed).
3. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture or relationship of employment between the parties nor constitute any party the agent of the other.
4. If a provision of this Agreement is declared or in any Operator's opinion may be declared illegal, invalid or unenforceable in whole or in part, for any reason whatsoever by any competent tribunal or authority, such provision or part thereof shall be divisible from this Agreement and shall be deemed deleted from this Agreement insofar as the continued operation of this Agreement is concerned provided always that the parties shall negotiate in good faith to agree a valid and enforceable term in substitution. If in any party's reasonable opinion, the parties are unable to agree a suitable term that is valid and enforceable in substitution for any provision that is deemed deleted then that party may withdraw from the Scheme forthwith on giving written notice to the other.
5. This Agreement, including its Schedules sets out the entire agreement between the parties in connection with its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them. This Agreement may only be varied in writing.
6. Any notice or other communication (including a Deed of Adherence) given by any party shall be deemed to have been received: (i) in the case of a notice given by hand, at the time of day of actual delivery; (ii) if sent by fax, with a confirmed receipt of transmission of all pages from the receiving machine, on the day on which transmitted; and (iii) if posted, by 10am on the second Business Day following the day on which it was despatched by first class mail postage prepaid provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.
7. In the event of any dispute arising out of or in connection with this Agreement, the parties will in good faith refer that dispute to the Managing Directors (or nearest equivalent) of each of them.
  - a. If the matter has not been resolved by the Managing Directors (or their nearest equivalents) within 28 days of the referral pursuant to paragraph (a) above, the parties will be free to pursue their remedies without further reference to this paragraph.

8. For the purpose of section 1(2) of the Contracts (Rights of the Third Parties) Act 1999 (the "**1999 Act**") the parties state that they do not intend any term of this Agreement to be enforced by any third parties except that any passenger holding a valid Ticket for use on the Services may enforce their right to use that Ticket. Any third party right which exists or is available independently of the 1999 Act is preserved.
9. The validity, construction and performance of this Agreement shall be governed by English law.
10. Any claim, dispute or difference arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts to which each of the parties irrevocably agrees to submit.

3.

Schedule 3 - Deed of Adherence

**THIS DEED OF ADHERENCE** is made the day of by

of

(hereinafter called the "**Covenantor**").

**SUPPLEMENTAL** to a multi-operator individual ticket agreement dated the 2011 made between (1) the persons named as Operators in that agreement and (2) persons who subsequently accede to the deed (the "**Agreement**").

**WITNESSETH** as follows:

1. In this Deed words and expressions defined in the Agreement shall have the same meaning herein.
2. Schedule 1 to the Agreement is hereby amended to include the following Services provided, and Tickets issued, by the Covenantor:

Services

Operator	Service	Principal places served

Tickets

Ticket type	Period of validity	Issuer

3. The Covenantor becomes an Operator for the purposes of the Agreement from the Commencement Date of the Scheme.
4. The Covenantor hereby confirms that it has been supplied with a copy of the Agreement and hereby covenants with each of the Operators to observe, perform and be bound by all the terms of the Agreement which are capable of applying to the Covenantor and which have not been performed at the date hereof to the intent and effect that the Covenantor shall be deemed with effect from the date of this Deed to be a party to the Agreement.
5. The Covenantor covenants separately with each person who is or becomes an Operator that it will indemnify each of them and keep them fully indemnified against all liabilities, costs, claims, demands and expenses arising out of or in connection with the death or injury to any person or loss of or damage to any property to the extent that such death, injury, loss or damage is attributable to the acts or omissions of the Covenantor, and its employees, agents or sub-contractors.
6. For the purpose of section 1(2) of the Contracts (Rights of the Third Parties) Act 1999 (the "**1999 Act**") the parties to the Agreement state that they do not intend any term of this Deed to be enforced by any third parties and the parties agree that any third party right which exists or is available independently of the 1999 Act is preserved.
7. This Deed shall be governed by and construed in accordance with the laws of England.

**EXECUTED** as a deed this day and year first before written.

**EXECUTED** as a deed and )

**DELIVERED** by two )

Officers of the Covenantor )

Director: .....

Director/Secretary: .....

**IN WITNESS** whereof this Agreement has been entered into the day and year written above.

**SIGNED** by )

for and on behalf of )

**{Name of operator}** .....

**SIGNED** by )

for and on behalf of )

**[Name of operator]** .....

1 18 (3) A qualifying agreement falls within this sub-paragraph if—

- (a) it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities, but
- (b) the authority, or any of the authorities, has certified that they have considered all the terms and effects (or likely effects) of the agreement and that in their opinion the requirements mentioned in sub-paragraph (4) are satisfied.

## **Annex C**

### **Notice of Intent to Prepare an Enhanced Partnership Plan and Schemes**

**[Date]**

At its meeting on [date], [Name of LTA] gave approval to proceed with the development of an Enhanced Partnership. The commencement of this is confirmed through this notice of the intention to prepare an Enhanced Partnership Plan and accompanying Enhanced Partnership Schemes, as required and set out in section 138F of the Transport Act 2000.

