

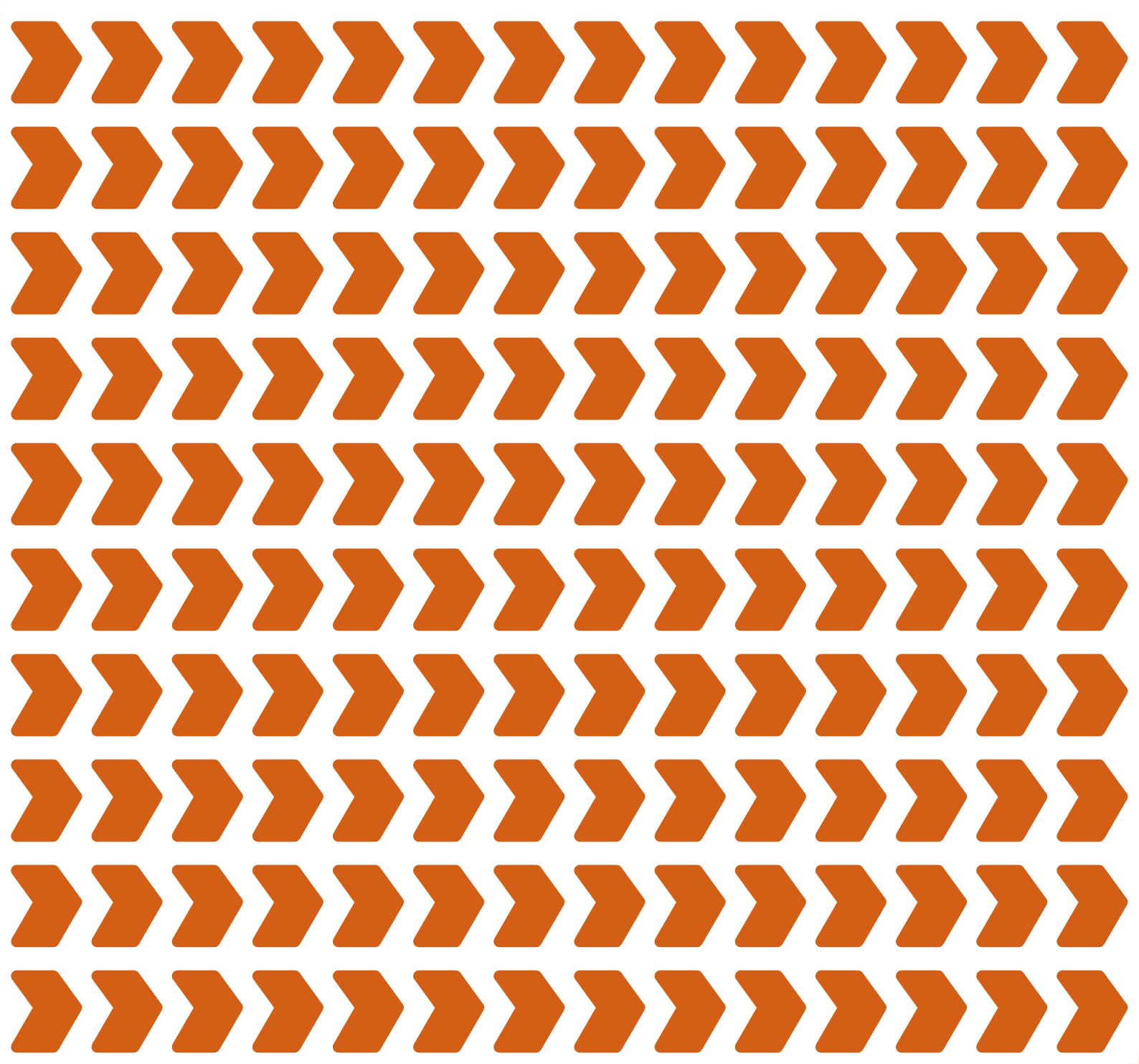


Department
for Transport

The Bus Services Act 2017

Enhanced Partnerships

Guidance



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Enhanced Partnerships Guidance

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1. Introduction

- 1.1 This document provides guidance on the key elements of the new Enhanced Partnership (EP) schemes which can be made by local transport authorities in England. It is intended for (a) authorities and operators wishing to establish a new partnership arrangement; and (b) for partnership agreements made under the legislation set out in the Bus Services Act 2017 (the 2017 Act) that subsequently need changing or revoking, in whole or in part.
- 1.2 An EP is an agreement between a local transport authority (LTA) and local bus operators to work together to improve local bus services. It includes a clear vision of the improvements that the EP is aiming for (known as an EP plan) and accompanying actions to achieve them (set out in one of more EP schemes). The local transport authority 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.
- 1.3 The 2017 Act allows individual partnerships to tailor their schemes to meet local needs. Therefore, we do not wish this document to fetter that flexibility by providing content on areas where it should be for local partnerships to determine their own policies and how these are to be pursued. Getting the balance right is crucial and we will monitor the use of this guidance and how individual partnerships are developed and implemented 'on the ground' to ensure that it provides the right level of guidance, is pitched in the right way and remains fit for purpose.
- 1.4 Please also bear in mind that the new 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.
- 1.5 This document includes two different types of guidance:
 - Informal guidance which seeks to explain how the new provisions introduced through the 2017 Act work in practice and offer some practical suggestions as to their application. This Informal guidance is shown in normal type font in this document. It has no formal legal status and there is no statutory requirement for a local authority to have regard to it. It may however reference 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).

2. Informal discussion on the viability of an Enhanced Partnership

- 2.1 This section provides operators and authorities with advice on how to start discussions about a potential EP arrangement.
- 2.2 Before any formal processes are embarked upon, the authority (or authorities) and operators that run services in the geographical area that it is being considered for an EP should hold informal discussions on whether an EP is viable in this area.
- 2.3 Whilst the formal legislative processes are led by the authority, there is nothing to prevent an operator or group of operators from approaching the authority seeking informal discussions about whether an EP is worth pursuing. At this stage, none of the parties involved are committing themselves to partnership. It is just an informal discussion.
- 2.4 In these initial discussions the authority (or authorities) and operators should consider whether a formal partnership is the most appropriate way to improve local services, or whether what the authority and the bus operators wish to jointly achieve can be done through a voluntary agreement. A voluntary agreement may be able to deliver change more quickly.
- 2.5 Each authority, or authorities acting jointly (if there is more than one), considering an EP should explore with relevant operators how an EP can improve bus services in that area. We would also expect the authority and operators to seek informal views from a wider set of stakeholders at this informal stage – such as passenger groups, community transport operators and representatives of local businesses.
- 2.6 The key aim is to facilitate a shared understanding between the authority and operators of:
 - the contribution that buses can play in meeting the needs of the local area;
 - the factors that can affect how, and to what extent, local people use bus services; and
 - what a formal bus partnership might achieve.
- 2.7 The discussion areas are entirely up to the parties involved to decide but they should at least include a realistic assessment of how bus services can be improved. The discussion might also include consideration of issues such as:
 - how all parties wish to see people using the bus network in the future;
 - identifying planned housing or business development that could affect how people travel around the area;
 - existing and future pressures on the road network;
 - air quality or other environmental challenges;
 - what bus priority measures could be beneficial;

- how bus services could be promoted and marketed;
 - how ticketing changes might help; and
 - the high level financial and commercial implications of potential options (such as the impact of congestion on the costs of maintaining services, and the resources that improving bus journey speeds could release for operators).
- 2.8 It is also helpful to use available and accurate data to help formulate plans. For example, vehicle location, or journey time data can be very useful in identifying congestion hotspots where, for example, bus priority measures might be helpful.
- 2.9 These early informal discussions are vital, as they will allow authorities and operators to form a view on what is likely to be collectively deliverable under an EP within an informal environment and before any commitment is made to an EP. The discussions should not be used to agree the full details of an EP before the formal processes are commenced. If it is clear from these informal discussions that there is very little agreement between the authority and operators, or there is very little trust or appetite for partnership working between the parties, then an EP is probably not appropriate for that area.
- 2.10 When considering any type of partnership, voluntary or one that is underpinned by legislation, LTAs must consider competition issues. This is not simply to ensure compliance with Competition Law, it is also to preserve as far as possible the passenger benefits of lower fares, quality services and innovation that competition between operators will help foster.

3. Formal discussion of an Enhanced Partnership

- 3.1 It is important to bear in mind that even when formal processes begin, the development of an EP is still very much a negotiation between the authority and operators. This is because, under the formal EP processes, neither side has overall control. Although, under the legislation, the authority ‘makes’ the EP, they cannot do so in isolation without the agreement of a defined number of relevant operators¹. So an EP is in practice a joint proposal. – both the authority *and* a defined proportion of operators must agree to it (i.e. not object) for the EP to go ahead. This may mean that policies important to one side but not to the other may need to be modified or abandoned in order to maintain progress. Flexibility and compromise will be key to achieving agreement between the parties.
- 3.2 It is worth stressing at this point that any commitments made by the authority or by bus operators once a formal EP is ‘made’ are legally binding. An authority that does not fulfil its obligations can face legal action by the bus operators in the courts. Likewise an operator not meeting service standards could be in breach of its local bus service registration and can face registrations being cancelled and/or wider action by a traffic commissioner.
- 3.3 Authorities are under a legal obligation to consider whether it would be appropriate to make an EP jointly with one or more other local transport authority or authorities². These authorities also have a duty under the Act to co-operate with each other³.
- 3.4 As with the existing partnership regime, EP arrangements are subject to the competition test in Schedule 10 of the 2000 Act. The LTA will need to satisfy itself that the harm to consumers resulting from a reduction in open competition as a result of an EP is balanced by the benefits it will bring to passengers. See section 9 for further information about competition issues.

Notice of Intention and Invitation to Participate

Once informal discussions have taken place and there is general agreement that an EP proposal is worth pursuing, the formal legal processes can begin. It is an important legal requirement that an authority embarking on drafting an EP plan and scheme gives formal notice of its intention to prepare an EP and invites all the local bus operators to participate in that process⁴ *before* they start to prepare the plan and scheme. The authority's notice of intention to prepare an EP plan and scheme should set out the geographical area which it is envisaged that the EP plan could cover

¹ Guidance about the operator objection process is set out in section 5.

² Section 138A(14) of the 2000 Act/section 9 of the 2017 Act

³ Section 138A(13) of the 2000 Act/section 9 of the 2017 Act

⁴ Section 138F of the 2000 Act/section 9 of the 2017 Act

(although this can be modified later) and include a contact point at the authority for further information. If an authority is unsure of what geographical area to include at this stage we recommend including the entirety of the authority's area - as this links to the powers to request information set out elsewhere in this guidance.

Geographical areas can also be very specific - e.g. only covering a new housing development to ensure that bus services serving it operate at even frequencies and meet certain standards. Stagecoach have produced a guide 'Bus Services and New Residential Developments'⁵ on how bus services can better be integrated with new housing.

- 3.5 It is up to the authority 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.
- 3.6 Operators of services that enter the plan and scheme area whilst the proposals are being considered will also have to be invited to participate. The involvement of local bus operators early on in the process is vital in determining what is likely to be deliverable and supported at a later stage.
- 3.7 There is no obligation on operators to participate in the development of an EP, but 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 given an opportunity to take part in 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 whether they have participated in the development of an EP or not.
- 3.8 Once notice has been given and invitations to participate have been issued, formal discussions between authorities and local bus service operators can commence on the content of an EP. These discussions will build and expand upon the informal discussions and enable the parties to form a view of what improvements could or should be delivered through an EP. This is likely to involve making buses a more attractive proposition for the travelling public, devising steps to relieve congestion and action to achieve growth in the market for bus services. The discussions should acknowledge that many of the service standards imposed by an EP will be paid for by operators who will be seeking to ensure that any EP proposal will deliver tangible benefits to those businesses that would justify their future investment.
- 3.9 Other stakeholders such as passenger groups should also be involved at this stage to ensure that the EP package that goes forward to the next stage is likely to deliver the outcomes that are expected. The scale of stakeholder participation should reflect the size and ambition of the proposals. A small-scale EP in, say, a small market town involving a few proposals is unlikely to require large-scale stakeholder engagement and governance. However, an EP covering the whole or large parts of a city is a different matter. This is likely to involve many different stakeholders and needs governance structures that can support it.
- 3.10 In these circumstances we would advocate creating a board to oversee work on the EP made up of the authority, bus operators, representatives of passenger groups, local businesses, the Local Enterprise Partnership and local authorities whose areas would neighbour any proposed scheme. Only the operators and authority will be able to determine whether the EP goes forward – but this does not prevent or exclude

⁵ <http://www.stagecoach.com/~media/Files/S/Stagecoach-Group/Attachments/pdf/bus-services-and-new-residential-developments.pdf>

others on the board from contributing to the development of the proposals. It may also be desirable for the board to have an independent chair, or arrangements for the chair to rotate between key stakeholders or between the operators and the authority. What is important is that those discussions should be open, honest and productive.

- 3.11 These discussions can be informed by information provided by operators, either on a statutory or voluntary basis. Further details on the statutory powers to obtain information are at paragraphs 4.9-4.17 below.

4. The EP plan and scheme(s)

- 4.1 This section of the guidance is designed to assist operators and local transport authorities in developing the content of EP plans and scheme(s).

What are the plan and scheme(s)?

- 4.2 Once authorities and relevant bus operators have held formal discussions on the proposed content of an EP, the next step is to draft the formal documentation. This comprises:
- an EP plan - which is a high level vision and objectives for bus services in the local area (see paragraphs 4.3-4.5); and
 - one or more EP scheme(s) - which set out the detail of how the vision and objectives will be achieved, including any commitments made by the local authority or standards to be met by bus operators (see paragraphs 4.5-4.7)

EP plans

- 4.3 The EP plan is the high-level strategic document that sets the bus network in the EP area into context⁶. There are a number of specific things that the plan must cover. These are:
- the geographical area cover by the EP plan;
 - the period to which the plan relates;
 - whether the plan is to be reviewed and, if so, how and when that is to happen;
 - an analysis of local bus services;
 - the objectives of the plan – in terms of how it will improve the quality and effectiveness of local bus services in the EP area;
 - what policies regarding local bus services will be pursued in the EP area;
 - how the related EP scheme(s) are intended to assist in implementing the policies and achieving the objectives set out in the plan;
 - the intended effect of the EP scheme(s) on neighbouring areas that are outside the plan area; and
 - the authority's plans for consulting passenger groups on how well the plan and scheme(s) are working.
- 4.4 These are all high-level requirements and the plan can interpret them as widely as the partnership considers necessary. It can include for example:

⁶ Section 138A of the 2000 Act/ section 9 of the 2017 Act

- targets for bus usage, journey times, or connectivity – the key here is that any targets should be assessed using existing available data or data that the partnership agrees it can compile;
- the strategic issues that, in the opinion of the EP stakeholders, are relevant to the future provision of local bus services. (such as the retail, business and housing developments that are likely to change the flow of people and their transport demands over the life of the plan, local economic growth objectives or air quality challenges);
- the local and central Government investment that is likely, or has the potential to be, available. This can include funding which is specifically available to improve or support bus services, as well as wider funding such as that for new housing (including developer contributions) or transport infrastructure; and
- the aspirations of local transport providers – how they would wish to see the local bus market develop over time and how an EP can contribute to that.

4.5 In meeting the statutory requirements an EP plan should include at least include:

- a map of the geographical area it covers;
- 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;
- 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;
- a summary of any available data on trends in bus journey speeds and the impact of congestion on local bus services;
- 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.

EP schemes

4.6 The EP plan cannot exist on its own. There must always also be one or more related EP scheme(s) as well. An EP scheme⁷ sets out requirements in relation to local bus services and actions to be taken by the local authority to deliver some or all of the policies and objectives in the EP plan. Again, it is important to emphasise that these elements must be formally agreed by both the authority (who decide whether to 'make' the scheme) and the majority of bus operators through the operator objection mechanism. Neither side can impose them unilaterally.

4.7 Under section 138A and 138H of the 2000 Act, a scheme must state⁸:

- 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

⁷ For scheme, also read schemes – as an individual plan can have more than one scheme.

⁸ Section 138A and 138H were inserted by section 9 of the 2017 Act.

- the period for which it is to remain in operation.

4.8 The Act 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);

Provision of information

4.9 It is essential that when developing a plan and scheme(s) that the partnership has access to comprehensive information about the existing bus network. The 2017 Act and Regulations made under it⁹ therefore enable the authority to obtain information about local bus services that operate either within or into the area. Area means the geographical area of the proposed EP as described in the initial notice of the intention to prepare a plan and scheme. The area could cover anything from a single route right up to the geographical area of the LTA or LTAs involved. Remember that the initial geographical area of an EP is not set in stone at this stage. It might be that the proposed area of the EP will grow or shrink in response to the information provided. If it grows, the LTA can submit a further request for information in the expanded area. However, to avoid repeated requests for information, we would advise LTAs to put in the notice and seek information on the largest geographical area that could realistically be covered by an EP. That should help capture all the relevant information likely to be required in one go and will cause less extra work if the area needs to be reduced or amended later on.

4.10 Authorities should not use these powers lightly and should only request information which is directly relevant to the work being undertaken on the EP and which they believe that they do not already hold. They 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.

4.11 The words in bold letters in each bullet point below set out the type of information that may be requested under the Schedule to the information Regulations¹⁰. 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.** 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 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. This can include, for example, any analysis or forecasts that

⁹ 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.

¹⁰ The Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017.

an individual operator may have undertaken on the effects of an EP plan or scheme once implemented or varied after implementation.

- **The structure of fares for journeys on the local service.** This enables the authority to request comprehensive information on the structure of fares 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 authority to get a complete 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 important factors that influence whether and how often people use bus services. Therefore, it is important that the authority can obtain a complete picture of how local bus services are performing 'on the ground'.
- **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 authority 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 complete picture of all the vehicles operated on local services in their 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 commissioner.

4.12 It should be noted that the authority has *no* power to request revenue information from operators in relation to EP plans and schemes. These powers also only relate to information which operators already hold. They cannot be used to force individual operators to produce any new analysis - it is only a power to request any analysis that may have been undertaken before the request was made.

4.13 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. 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 information¹¹.

4.14 The authority may only use the information provided for the purposes for which it was obtained. Where it is necessary for reasons relating to the EP, the authority 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).

4.15 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 4.14 above.

4.16 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 2000¹² that exempt disclosure of:

- personal information;
- information provided in confidence;
- information subject to legal professional privilege;
- Information of commercial interest.

4.17 However, these restrictions do not prevent it being shared as set out at paragraph 4.16 above, or disclosed:

- If it is personal information and the person concerned has consented to its disclosure;
- in connection with crime investigation, 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 of an authority under a scheme

4.18 An EP scheme does not have to contain commitments by a local authority. But it is highly unlikely that it will receive support from a sufficient proportion of local bus

¹¹ Section 155(1ZD) of the 2000 Act inserted by paragraph 6(5) of Schedule 4 to the 2017 Act

¹² See sections 40,41,42 and 43 of the Freedom of Information Act 2000

operators (under the operator objection mechanism described in section 5 of this document) unless it does so.

4.19 The scheme may require an authority to:

- provide particular facilities; and/or
- take particular measures.

Facilities

4.20 These are physical assets that are provided at specific locations along particular routes (or parts of routes) within the scheme area – such as new or improved bus stops or other passenger waiting facilities or new or improved bus stops with built up kerbs – which the authority agrees to provide¹³. They can also include new or improved bus priority measures – such as bus lanes, equipment to give buses priority at junctions, enforced clearways or new ‘buses only’ sections of road. The Act provides complete flexibility over what this package should look like - but, unlike the former statutory quality partnership powers, does not require the authority to provide ‘facilities’ as part of the EP proposals. It is entirely optional.

4.21 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 information¹⁴. 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 objection mechanism outlined at section 5 of this document covers the whole EP package, including proposed existing facilities.

Measures¹⁵

4.22 The authority can also do other things that are within its power – either statutory or otherwise – to make bus services more attractive. There is deliberately no definition of what a ‘measure’ is, in order to maximise the flexibility for authorities and operators to agree actions which are best suited to their local circumstances. 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.

Measures should be defensible as essential and proportionate, and must be applied in a non-discriminatory way. They must not create artificial barriers to competition or disadvantage operators unfairly, or prevent the provision of services that may benefit passengers.

4.23 Examples could include, but are by no means limited to:

- marketing schemes to promote the use of bus services;

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

¹⁴ Under section 139 or 140 of the 2000 Act.

¹⁵ Section 138D of the 2000 Act/ section 9 of the 2017 Act.

- changes to parking provision. An authority could decide, as part of the overall scheme package, to reduce the number of car parking spaces in a particular area, or increase car parking charges. Although neither measure affects buses directly, they do make buses more attractive by making using a car less attractive;
- limitations on the use of key routes by other types of traffic; and
- commitments to enforce traffic offences that could affect bus services – such as illegal parking;
- commitments to restrict the number of times in a year that roadworks occur on key bus corridors;
- A commitment to ensure that bus journey times do not increase over the life of the scheme.

Obligations on authorities to deliver scheme requirements

4.24 If an authority includes any facilities or measures in a scheme, they have a legal obligation¹⁶ to:

- 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.

4.25 The only exception to this rule is if:

- the scheme is formally postponed (see section 8 below); or
- if the authority is temporarily unable to provide a facility or take a measure due to circumstances beyond their control.

The role of highway authorities

4.26 As part of the negotiations between an authority and local bus operators, the authority may decide to offer as part of its part of the bargain, ‘facilities’ or ‘measures’ that would involve the making or varying of a traffic regulation order (TRO)¹⁷. These orders can be made either to affect permanent changes – such as preventing certain types of traffic from using particular roads on a permanent basis – or on a temporary basis – i.e. to restrict certain types of traffic because roadworks are taking place.

4.27 So, for example, in relation to a scheme, the authority might agree to include a ‘measure’ in the scheme that creates a ‘buses only’ section of road – by using a TRO to prohibit use of that section of road by all other types of traffic. However, an order can only be made by the relevant highway authority with the powers to do so on the stretch of road in question. For a measure or facility which is in the gift of a highway authority to be included in an EP scheme, that highway authority must be a formal party to the scheme. In many cases that will already be the highway authority making the scheme. In others it could be a metropolitan district council or even the Secretary of State for Transport.

4.28 It is important that the authority ensures that any relevant highway authority (if it not also the authority) is fully on-board before offering any facilities or measures that

¹⁶ Section 138J of the 2000 Act/ section 9 of the 2017 Act.

¹⁷ Parts I,II and IV of the Road Traffic Regulation Act 1984

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.

Requirements of a bus operator under a scheme

4.29 An EP scheme must include requirements that local bus services operating within the scheme area must meet or abide by¹⁸. These requirements are divided into ones that are specific to the frequency or timing of local services ('route requirements') and other types of requirement ('operation requirements')¹⁹.

Operation requirements

4.30 There are 5 main categories of operation requirement which can be included in an EP scheme²⁰. These are requirements about:

- the vehicles used to operate bus services, including their appearance (livery);
- providing information about bus services to the public and the publicising of local services;
- the dates on which timetables may be changed; and
- tickets - including:
 - how tickets can be purchased and fares paid;
 - how entitlement to travel can be evidenced by passengers;
 - the publicising of fares or ticketing arrangements;
 - the appearance of tickets;
 - the price of multi-operator tickets;
 - standardised ticketing zones, ticket lengths, or concession eligibility; and
- arrangements that facilitate the operation of the scheme.

Requirements about the vehicles used

4.31 These requirements 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;
- 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);

¹⁸ Section 138C of the 2000 Act/ section 9 of the 2017 Act.

¹⁹ Section 6D of the Transport Act 1985/ section 11 of the 2017 Act.

²⁰ Section 138C(4)-(7) and (9) of the 2000 Act/ section 9 of the 2017 Act.

- provision of Wi-Fi, USB charging or other technological requirements;
- 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.

Requirements about providing information to the public

4.32 This covers any information that passengers would require or expect to have access to in order to use bus services. These can include simple requirements such as the provision of timetable or fares information, to the provision of real-time passenger information. This can require information to be provided on the vehicle, at bus stops and stations, or via the web or on a smartphone or simply by printed material. Again these requirements can apply to all local bus services or particular descriptions of local services.

Requirements about how local bus services are publicised or marketed

4.33 This could for example, introduce an umbrella brand for the bus network in a particular area. This can specify particular logos, colour schemes, or other types of branding on publicity material – whether provided as physical media (leaflets, posters etc.) or electronically. These requirements then must be used on the publicity material produced by individual operators or by the authority itself. If considering introducing such a requirement, authorities should consider any potential impacts on competition and passengers if it becomes more difficult to differentiate between the services which compete and are provided by different operators.

Requirements about how often the timing of bus services can change

4.34 Currently, operators of commercial local bus service must give 56 days' ²¹ notice if they wish to change, for example, the routing or timetable of a service. However, a scheme can specify an alternative period. So, for example, it could specify that all bus services operating in a particular area or on a particular corridor must give, say, 100 days' notice or restrict changes to a set number of timetable change dates in a year. This might be, for example, because the authority and operators decide that some extra stability to the bus network is required, say, in a town centre, or to services provided to a new housing development, where particular emphasis is put on encouraging bus use. Or it might be that timings can only change in specific circumstances that are defined in the scheme. The requirement can also include exceptions to that rule - for example, where the change is as a result of a service cancellation by another operator. They can also include or take into account any established Code of Conduct on Bus Service Stability.

Ticketing structure and prices

4.35 There is considerable flexibility under an EP to ensure that a comprehensive suite of tickets are available to passengers and valid on all services. These requirements can

²¹ Or at shorter notice in specific circumstances.

cover the types of tickets that are available. Obviously, it is important that any ticketing arrangements are commercially viable for bus operators and individual operators can raise any issues with the CMA if they feel that they are being unfairly treated or that the results of ticketing arrangements are anti-competitive. See Section 9 for more information about competition issues.

4.36 The scheme has full flexibility to specify what range of tickets must be available in the scheme area. These can include:

- tickets available on particular services – such as a ticket that would allow passengers to travel on particular services - e.g. either to make a through journey using specified connecting services or as a travel card on a network of services marketed as, 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;
- 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).

4.37 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.

4.38 The table below illustrates what such a package could involve:

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	All	Single	All	Single	All	Single	All
Zone 2	Bus and tram	operat	operat	operat	operat	operat	operat	operat	operat
Zone 3		or Ticket	or ticket	or ticket	or Ticket	or ticket	or ticket	or ticket	or ticket
Zone 1 & 2	Bus Train and tram								
Zone 1, 2 & 3									

4.39 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' freedom to offer their own tickets or restricts 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. However, so as to not restrict the incentives on operators to compete on price or innovate on ticket types, LTAs are encouraged to have regard to the principles set out in ticketing block exemption relating to pricing and revenue allocation which represent a desirable approach in minimising incentives to increase prices for these and other tickets.

- 4.40 A scheme can specify the price of a multi-operator ticket. This means that the EP scheme could set the price of all of 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.
- 4.41 The price of a multi-operator ticket is not restricted to a simple pricing structure for period passes. 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; or capped prices.
- 4.42 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 individual 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). This intentionally preserves the freedom for operators in the scheme area to continue to compete on price for their single operator tickets and even to use this pricing structure to compete with any scheme-mandated multi-operator ticket.
- 4.43 Nor can an EP set the prices of any type of ticket mandated under the scheme other than the multi-operator ticket mandated under an EP.

How tickets are paid for

- 4.44 The scheme can also specify how passengers obtain tickets and pay for them. This might require that tickets are available on the bus, at bus stations, via bus operators' web portals and apps or their other retail outlets or other types of retail outlets such as (voluntary) participating newsagents. It can also specify that tickets should also be available through a specific portal or app. These requirements can apply to both single and multi-operator tickets.

Form of ticket and evidence of entitlement to travel

- 4.45 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 comprehensive powers to determine what ticketing technology is to be used. For example, it may require that operators can issue ticket media that meets a defined specification or standard – e.g. white-label contactless EMV or ITSO specification - or accept having "tapped in" with an ITSO or contactless EMV card as evidence of entitlement to travel. It can also require that bus ticket machines should be able to accept that ticket specification or mandate that local bus services must be able to accept a specific token, such as a smartphone or contactless EMV.

Marketing of ticketing products

- 4.46 The scheme 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 ticketing 'offer' to passengers that covers ticket types, marketing, fares information, ticketing technology and media. The scheme can also require that these ticketing products are marketed alongside – i.e. with equal exposure or emphasis – to individual operators' own ticketing products. This can be applied in relation to tickets that sit outside of an EP scheme, such as the multi-operator or multi-modal products already available in many major conurbations.

Ticketing aspects of EP schemes and competition law

- 4.47 Because these provisions will be legal requirements imposed through the EP scheme; and the LTA will need to comply with the competition provisions under Schedule 10 of the 2000 Act before they can be introduced, the ticketing arrangements in an EP *are not bound* by the rules and restrictions of the ticketing block exemption. Nor can operators be subject to action by the competition authority (such as financial penalties) for complying with such schemes. However, operators and authorities will need to take full account of competition law when developing this aspect of the scheme (see section 9 of this document for more information).

Route requirements

- 4.48 A scheme can also set requirements about the frequency or timing of particular local services, or types of services. These can relate to a single bus service or to multiple services.²² There should be regular review and flexibility to ensure that services are appropriate to what passengers want, which can change over time, and provisions should allow the most efficient and effective operators to provide the services rather than having inherited rights.

Frequency of services

- 4.49 The scheme may 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 12

²² Section 138C(1) of the 2000 Act/ section 9 of the 2017 Act.

buses an hour at other times, with, possibly, no restrictions for evenings and weekends. Schemes cannot specify which operators these requirements apply to. They apply to all services that currently operate or seek to operate along that corridor in the future.

- 4.50 These powers might be used if there are particular congestion of air quality issues on a certain route which diverting some buses to another corridor for some of their journey could help to address. However, limiting the frequency of bus services should not be seen as an easy option 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 car.

Timing of services

- 4.51 A scheme can also specify the times at which individual services arrive at bus stops. These requirements can apply to particular services or all services operating along the specified corridor. For example, an individual bus service could be required to arrive at a particular bus stop at a particular time to 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. **NOTE:** Because operators would be complying with the legal requirements of an EP scheme in adjusting their bus timetables (and so not be at risk of fines from the CMA), and the local authority will have considered competition issues in making the scheme, this will reduce significantly the risks to operators of integrating bus and rail services which are, or could be, provided by the same owning group (i.e. the same company operating both, say, a heavy rail service serving a particular rail station and the bus service that serves the bus stops outside it).
- 4.52 Another use of the power would be to require the services operating on a particular corridor to have even headways (time gaps between individual bus services). This could, for example, be used to prevent 'bunching' at bus stops where a number of buses arrive in close time proximity, leaving long time gaps between services. However, partnerships should consider the underlying problem first – is this a result of a wider traffic congestion issue that also needs to be addressed?

Obligations on operators to comply with scheme requirements

- 4.53 All local bus services must have their particulars (e.g. route and timetable) registered with the registration authority - currently the traffic commissioner, but in future could be the LTA. 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. So, for example, if the service will operate within the geographical boundary of, say, a multi-operator ticketing scheme, the operator must give an undertaking, when registering or varying the service, that they will comply with its requirements - e.g. accept the multi-operator ticket(s) on the service. If the operator does not give the undertaking, *the registration authority can refuse the registration*. Also, if the operator does give an undertaking but then does not comply

with it in practice - e.g. by the bus operator 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 2017 Act also contains powers enabling the LTA to become the registration authority for services that operate wholly within the EP area. This will allow 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 or posting staff on routes with clipboards) to ensure that services are operating in accordance with the registration.

- 4.54 Any route requirements which impose frequency limitations on a particular corridor could raise particular compliance challenges. The legislation makes specific provisions for Regulations to be laid to deal with this situation. These are still in development, but our intention is that if it is apparent that too many services will be operating to comply with a route requirements of this nature, the operators should have an opportunity to resolve the situation through a competition-law compliant qualifying agreement. If they are unable to do so within a set timescale then the authority would need to run a competitive tender process to allocate the limited slots available. Once the tender process is complete, all the existing registrations are cancelled and replaced by the tendered service.
- 4.55 Authorities should not consider this element of partnership as ‘franchising-lite’ and should approach any discussions in relation to a qualifying agreement in good faith. Nor should operators seek to try to preserve a purely deregulated route network. Partnership involves both sides working together to improve services to passengers. Each side must be prepared to give ground and not seek to exclusively pursue their preferred options in order to preserve their own position.

Other potential elements of EP plans and schemes

Arrangements for reviewing a plan or scheme

- 4.56 There is no obligation to review a plan or scheme under the legislation, however see paragraph 4.58²³. This might be, for example, because a scheme is so small scale that reviewing it is not necessary – although some review at some point in the future (even if this is a number of years in the future) is advisable. However, it is likely that large scale plans and schemes will need reviewing – not least to determine whether the content of those plans and schemes are having the desired effect ‘on the ground’ in terms of, say, encouraging bus use. Schemes should definitely be reviewed if the authority believes a change in circumstances has resulted in the scheme(s) no longer meeting the competition test (see section 9 of this document).
- 4.57 It may also be appropriate for a scheme which sets the price of multi-operator tickets to review the price of those tickets at regular intervals and/or where specific changes in circumstances occur and it would be reasonable to do so. The triggers for that review can be included within the scheme itself.
- 4.58 Each plan and scheme must say whether it is subject to review and - if so - specify:
- how it is to be reviewed; and

²³ Section 138A(4) and (7) of the 2000 Act/ section 9 of the 2017 Act.

- the dates on which the reviews are to be completed.

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

- the issues listed at paragraph 4.5 above;
- the arrangements for consulting passenger representatives on the effectiveness of the EP; and
- the objectives set for improving the quality and effectiveness of bus services.

4.60 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, if relevant, on bus journey times, passenger satisfaction and growth of the market.

4.61 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).

Bespoke arrangements for variation or revocation of a scheme²⁴

4.62 One of the core principles of the EP arrangements is that, as well as being invited to participate in the scheme development, local bus operators who are likely to be affected by an EP should have a formal say on the draft plan and scheme(s) at key stages. The plan and/or scheme(s) can only proceed at those points if there is sufficient support from operators for them - but note that this does not require support from *all* operators. The default mechanism by which that is judged is set out in regulations²⁵ and is discussed in detail in section 5 of this document.

4.63 We are conscious that local bus markets can vary significantly across the country. The default mechanism therefore only applies to EP plans and to EP schemes when they are initially made. An EP scheme can contain an alternative, bespoke arrangement (which requires a higher or lower level of support from operators or uses different metrics to that in the default approach) which is to be used when the scheme is varied or revoked. This mechanism can apply to all variations or revocations or just to variations or made only in relation to certain aspects of the scheme. So, for example, a scheme could state that:

- a new mechanism is used to revoke the scheme (but not to vary it); or
- a new mechanism is used to vary it (but not revoke it); and/or
- a variation which changes, removes or introduces particular type of operation requirement (such as changes to ticketing provisions or the price of a multi-operator ticket) requires a different level of support from operators; and/or
- a variation which changes, removes or introduces route requirements requires a different level of support from operators; and/or

²⁴ Section 138E of the 2000 Act/ section 9 of the 2017 Act.

²⁵ The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017.

- a variation which changes the commitments to take measures or provide facilities made by a local authority requires a different level of support from operators; and/or
- if a local authority does not deliver particular measures or provide particular facilities in line with the scheme commitments then the scheme can be varied in relation to the route requirements or operation requires with a different level of support from operators; and/or
- some minor variations could be made with little or no support from operators.

Impacts on small and medium sized operators

- 4.64 The bus market in England is largely made up of a small number of very large operators and a large number of very small operators, with a small number 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.
- 4.65 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.
- 4.66 Authorities should conduct a thorough assessment of which operators in the EP area(s) they consider to be SMOs and a summary of this assessment should be included in the EP plan and each scheme. Authorities should, amongst other things, take account of the overall nature of their market, the operator's fleet size and consider the turnover of the operator – where necessary including its parent structures – as a whole. SMOs may be disadvantaged in their ability to engage in aspects of developing the scheme, but excluding such operators reduces a significant competitive restraint on larger operators that stimulates innovation, quality and value for money. There should be a level playing field between all operators.
- 4.67 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.

Flexibility available to plans and schemes

- 4.68 It is for individual partnerships to decide on the content and geographical area of plans and schemes. They can be as simple or complicated as the partnership considers appropriate. A plan can cover the whole of an authority area or a combination of different authority areas, or it can cover only a part of a single area – e.g. the centre of a market town.
- 4.69 A plan can be supported by a number of different schemes of varying size and ambition that are introduced at different times and have different durations. A scheme can cover all of the area to which the 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 imposes only ticketing requirements across the whole area;
 - another scheme dealing only with route requirements on a particularly congested corridor; and
 - a third scheme that imposes branding and marketing requirements on all local services operating within a city centre - but not in the rest of the plan area.
- 4.70 These schemes could be introduced at different times and have different durations. It is also possible for a single scheme to set different implementation dates for separate elements within it. Also bear in mind that where the duration is fixed, operators may advocate a longer scheme duration if this stability gives them greater confidence to invest.
- 4.71 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; and
 - that where the plan has a fixed lifetime (and it isn't required to) a scheme is made and in force during that lifetime.
- 4.72 How large an area the plan and scheme(s) covers will largely depend on the scale of ambition. For example, an intention to improve bus services in a small market town may only result in the plan and a single scheme covering a relatively small area that comprises the boundaries of the town. However, an EP intended to improve the bus services across a city will necessarily require the plan to cover a much wider area. But this does not necessarily mean that the resultant scheme(s) should cover a wide area also.

Notice that a plan and scheme have been prepared²⁶

- 4.73 Once the draft plan and scheme have been prepared, the next stage is to make all relevant local operators aware of the full details of what is being proposed in the draft plan and scheme so that they can offer views before it is finalised. This is because some operators may not have wished to participate in the preparation of a plan and

²⁶ Section 138F of the 2000 Act/ Section 9 of the 2017 Act

scheme but should now, in any case, be given the opportunity to object to a proposal before it is subject to wider consultation.

- 4.74 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 regulations²⁷ and is explained in section 5 of this document. 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.
- 4.75 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.
- 4.76 The notice must:
- contain full details of the plan and scheme;
 - 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 regulations²⁸;
 - give a period of 28 days or more within which objections may be made; and
 - contain details of how an operator should make an objection, including a mail and email address to which objections should be sent.
- 4.77 We recommend that authorities invite operators to provide reasons for any objection which they make, in order to assist in the development of revised proposals if necessary. But there is no obligation on an operator to provide a justification for their objection.
- 4.78 Alongside issuing this notice, authorities may wish to use their powers to obtain information²⁹ from all operators of the registered distance of all their qualifying local services, in order to assist the authority in determining the total distance and so determine whether or not the relevant threshold for objections has been reached.
- 4.79 Further details on determining whether a scheme can proceed to the next stage following objections from operators is provided in section 5 of this guidance.

²⁷ The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017

²⁸ The Enhanced Partnership Plans and Schemes (Objections) Regulations 2017

²⁹ 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.

5. Objection method

Introduction

- 5.1 This section covers the operators' objection mechanism.
- 5.2 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.
- 5.3 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 wishing to object to a plan or scheme are not required to give a justification for doing so. However, we would encourage - where possible - operators to raise any concerns that might lead to an objection with the authority before the objection process commences, so that early resolution can be sought.
- 5.4 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, in some circumstances (as set out in paragraphs 4.62 and 4.63) different, locally determined criteria contained in a scheme may be used to determine whether sufficient objections have been received.

Objection process

Who can object?

- 5.5 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 subsidiary³⁰ of a parent company - e.g. the Blackmore Group that has two bus companies, Blackmore Buses and Blackmore Red Rover Buses - those two (or more) subsidiaries are to be treated as a single operator under the objection mechanism. This is to prevent bus companies splitting into smaller subsidiaries in order to have more influence over the objection process.

³⁰ 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.

What is a qualifying local service?

- 5.6 A service is a "qualifying local service" 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.³¹ 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 but is an excursion or tour³²;
 - 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).
- 5.7 Whether or not a particular service is a qualifying local service is determined on its status on the day before the notice is issued. In practice this means that all local services that are operating on that date, or that will begin operating after that date, will need to comply with the requirements of the scheme.

How do operators make an objection?

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

What happens once objections are made?

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

³¹ As set out in regulation 3 of the Enhanced Partnership Plans and Schemes (Objections) Regulations 2017.

³² As defined in section 137(1) of the Transport Act 1985.

the bus operators in that area.

5.10 If a plan and scheme have different geographical areas then separate determinations of whether sufficient objections are made for each. Operators in scheme or plan areas where they do not operate local services cannot exercise objection rights in those areas.

The initial plan must be accompanied by one or more schemes, so neither the plan nor accompanying scheme(s) can proceed to consultation if:

- the plan does not receive sufficient objections but the accompanying scheme does; or
- The plan does not receive sufficient objection and if more than one accompanying scheme is proposed, they all receive sufficient objection. If some of the accompanying schemes do not receive sufficient objection, they can proceed to consultation with the plan;
- the accompanying scheme(s) do not receive sufficient objections, but the plan does.

How is registered distance calculated?

5.11 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 in order 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 would of course 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

5.12 The authority itself 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 can't proceed to consultation?

5.13 Hopefully, the authority 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 prevents the consultation process from going ahead, the authority will need to discuss the package of measures in the plan and 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.

6. Consultation process

Carrying out the consultation

- 6.1 Assuming that the objection stage does not raise sufficient objections to meet either of the two criteria outlined above, the next stage is a formal consultation exercise. Consultation is an important element in the delivery process.
- 6.2 Transport Focus has produced guidance on carrying out consultation exercises – ‘Bus service reviews: consulting on changes to local services’ – that identifies key considerations when designing and delivering a consultation exercise and highlights recent best practice.
- 6.3 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;³³
 - 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.
- 6.4 Although these are the bodies that must always be consulted, these minimum requirements should be seen as only part of a wider need for effective communication, publicity and consensus building. Where a scheme involves modification to infrastructure, the Authority should consider the appropriateness of also consulting:
- residents and occupiers of commercial premises in the immediate vicinity of proposed works;
 - existing bus passengers on affected services; and
 - existing road users on affected highways.
- 6.5 Where the scheme involves modification to services, consultation should also be conducted with:
- existing bus passengers on affected services; and

³³ 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.

- relevant organisations which are not already involved in the EP process (for example, major local employers).
- 6.6 Responses to the consultation should be analysed thoroughly and changes made to the proposals where necessary. This should not be undertaken as part of the work of the partnership, not by the local authority in isolation. There is little point in conducting an extensive and comprehensive consultation exercise if, for example, passengers' views have not been properly taken into account or enough time and analysis of the responses has been undertaken. They are the group that bus services need to cater for, so their views ought to be paramount. The appropriate time needs to be devoted to analysing feedback from consultation and where necessary amending the proposals.

Consulting on multiple schemes

- 6.7 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.

7. Making a plan and scheme³⁴

Modifications to EP proposals following consultation

- 7.1 Once the consultation exercise has completed and the responses have been properly analysed and any changes made, the local authority must decide 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'). The local authority should discuss this with the operators so that agreement can be reached on what the final form of the plan and scheme should look like. Particularly bearing in mind that any changes to the plan and scheme as a result of the consultation exercise will trigger the operator objection mechanism as set out in paragraph 7.4 below.
- 7.2 This can be on the basis of the plan and scheme put to consultation, or a modified version of either that takes into account the responses to consultation. As stated previously, it is important that the partnership is open to changing the content of the plan and/or the scheme to reflect consultation responses, especially feedback from passengers or passenger groups.

Notice of intention to 'make' a plan and scheme

- 7.3 Once that process has completed, the next stage is to inform all operators of qualifying local services of the intention to proceed. Again, this is because it is not a legal requirement that any particular operators should be obliged to participate in the preparation of a plan and scheme up to this point. Although all operators should have an opportunity to do so, there may be some that do not wish to engage with the process. However, despite this, all operators at this stage should be made aware of the full details of what the 'making' of a plan and scheme will mean for them, so that they can properly take part, if they wish, in the subsequent procedures set out below. These details can be contained in a letter or email (preferably both) to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated website. This notice, as a minimum³⁵, 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).

³⁴ Section 138G of the 2000 Act/ section 9 of the 2017 Act.

³⁵ Section 138G(3) of the 2000 Act/ section 9 of the 2017 Act.

If it is the LTAs 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.

Operator objections

- 7.4 An essential legal requirement after a consultation exercise on a plan and scheme and before either can be finalised or implemented is that operators of local bus services are legally entitled to object to a modified plan and scheme being 'made' (if the proposals remain unmodified after consultation then there is no need for a further operator objection process). Unless this process allows the plan and scheme to be made they cannot do so. An authority cannot unilaterally decide to implement a modified plan or scheme. It can only do so if any formal objections from operators do not satisfy either of the criteria listed in section 5 above.

What happens after the objection period has elapsed?

- 7.5 Again, hopefully the authority will have gained a sufficient steer during the post-consultation negotiations on the package to determine in advance whether individual operators are likely to object – and, where necessary, negotiate changes to resolve them. However, if sufficient objections are received that prevents the consultation process from going ahead, the authority will need further to discuss the package of measures in the plan and scheme with their operators to resolve the contentious issues – then open the revised package to objections once again. However, as with objections made prior to consultation, whilst the authority should seek to resolve as many objections as possible, it does not require all objections to be resolved. The legal requirement again is that if there are not sufficient unresolved objections to meet either of the objection criteria, then the plan and scheme can be made.

Making the plan and scheme – notice

- 7.6 Once the objection process has been completed and if there are not sufficient objections to prevent the plan and scheme being made, the authority can then make the plan and scheme. The date that the plan and scheme are made are for the authority to determine. However, the requirements in a scheme can only enter into force after the scheme is made – so that date must properly take into account the dates from which the requirements in the scheme will enter into force and the statutory 56 day notice period for changing registrations. If the authority intends to take over the local bus service registration system from the traffic commissioner (see section 6E(7) of the transport Act 1985 as inserted by section 12(3) of the 2017 Act), 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 regulations and guidance will be provided in due course to enable LTAs to take over the registration function from the traffic commissioners.**

Notice that a plan and scheme has been made

7.7 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 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.

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

7.8 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)

7.9 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.

8. Postponing, varying and cancelling an Enhanced Partnership

Postponement of an EP

- 8.1 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 scheme³⁶. The dates that can be postponed are:
- The date on which the scheme is to come into operation.
 - The date on which a particular requirement is to be imposed under the scheme.
 - The date on which any particular facilities are to be provided – such as new bus stops or other waiting facilities.
 - The date on which any particular measures are to be taken – such as reduction in the number of parking spaces or parking fees that are under the control of the authority are to be changed.
 - The date on which operators are required to comply with particular registration conditions – such as an area-wide or route requirement.
 - The date upon which any change as a result of a scheme variation or revocation comes into effect.
- 8.2 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.
- 8.3 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 later than 14 days after the decision is made to those listed in section 7 of this document.

Variation of an EP

- 8.4 Once a plan and scheme have been made there is nothing to prevent the partnership from varying it³⁷. A variation can result from a number of reasons:

³⁶ Section 138I of the 2000 Act/ section 9 of the 2017 Act

³⁷ Section 138K of the 2000 Act/ section 9 of the 2017 Act

- Another authority wishes to become part of the plan and scheme – this can be because, for example, the EP has been so successful in the original geographical area that another authority wishes to take part.
- A proposal to extend a ticketing scheme into a surrounding urban or rural area that is within another authority area. Indeed, when considering to vary an EP plan, an authority has a 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 or even withdrawn entirely.
- Schemes must also be reviewed if the LTA believes a change in circumstances has potentially resulted in the scheme(s) no longer meeting the competition test under Schedule 10 of the 2000 Act.

8.5 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.

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

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

Notice of intention to prepare a variation to a plan or scheme

8.7 As with other stages of preparing and making a plan and scheme, the authority should give local bus operators and other stakeholders that have been involved in the preparation of a plan (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 vary it. It is important that those stakeholders are involved in the preparation of any variation and fully understand why the authority is proposing the variation. This may be, as stated above, because the authority wishes to include a neighbouring authority in a plan and scheme. Or it may be because the authority and local operators feel that changes need to be made to a scheme in the light of experience of how the original scheme proposals are working 'on the ground'. There is also nothing to prevent an operator or group of operators approaching an authority with a proposal for variation. There are no conditions on what can be varied. It is up to individual partnerships to decide. In the case of varying a scheme, there is no need to involve operators that will not be affected by the variation – but 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).

- 8.8 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 and especially a scheme are aware of its existence. Again this is important because not all operators may have been able or wished to be involved in developing the proposals. But once those proposals have been developed at this stage all operators running services within or into the area subject to the variation should be made aware of the full details of what is being proposed so that they can properly take part, if they wish, in the subsequent procedures. These details can either be contained in a letter or email (preferably both) to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated website.
- 8.9 This also applies to other stakeholders. If, for example, a passenger group has decided not to be involved in the development of a variation they should be made aware that a draft proposal has been tabled.

Consultation

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

Operator objections

- 8.11 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, may contain an alternative objection mechanism that is used when a scheme is varied or revoked. If this is the case, then that mechanism must be used for the purposes of operator objections. However, if no alternative mechanism has been included in the scheme, the statutory requirements will apply. Only the statutory objection mechanism can apply to the variation (or revocation) of a plan. 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.
- 8.12 If the statutory objection mechanism is to apply, the same procedures will apply as when voting takes place prior to the consultation stage and making of a plan and scheme. Any operator of qualifying local bus services that operates within or into the geographical area of a plan or scheme on the day before the notice under paragraph 8.7 above is entitled to object.

- 8.13 The same requirements that apply to notice, consultation and making of a scheme also apply at this stage when the variation to an existing scheme is being considered³⁸. If following the operator objection process, the variation of the plan or scheme is to proceed, the authority must carry out a consultation exercise on the variation proposal. It is for the authority itself to determine how to undertake this exercise. However, all operators of local bus services in the area concerned must be formally notified as well as any other stakeholders, such as passenger groups that have been involved in the making of the original scheme. At this stage the Competition and Markets Authority must also be formally consulted.
- 8.14 Again, as with the procedures outlined previously, following consultation, if the authority decides to 'make' the variation, they must give notice to all operators of local bus services and allow operators to make objections. The objection mechanism used can either be a bespoke one that has been defined in a scheme (if only a scheme is being varied) or, in its absence, the statutory one. The variation of a plan must use the statutory voting mechanism.

Decision to vary a plan or scheme

- 8.15 Again, as with other stages of the process, if an authority, after consulting operators, decides to make the variation, the authority must give notice, not later than 14 days after the decision is made to:
- Relevant stakeholders in the plan and scheme area.
 - To all operators that would be affected by the scheme.
 - The traffic commissioners.
- 8.16 The date(s) for variation of a plan – and particularly a scheme – will need to take into account the 56-day rule for registration variations – although the traffic commissioner or the LTA (if it is the registration authority) can decide to grant short notice variations if requested to do so by operators.

Revocation of a plan or scheme

- 8.17 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.
- 8.18 The authority should give notice of their proposal to revoke a plan and scheme to all stakeholders that were involved in the previous stages of preparing or varying a plan or scheme. But as a minimum this must comprise:
- Operators of local services that provide local bus services in the plan or scheme area that would be subject to revocation;
 - The Competition and Markets Authority; and
 - Other persons the authority or authorities think fit.

³⁸ Sections 138L and 138M of the 2000 Act/ section 9 of the 2017 Act

- 8.19 If after consultation, the authority still wishes to proceed with revocation, they must formally notify all the operators of local services of their intention to revoke a plan or scheme. This notice must, as a minimum, contain:
- The date on which the plan or scheme is to be revoked.
 - The authority's reasons for revocation.
 - Information on how the objection mechanism will be conducted - i.e. will it operate under the statutory powers or a bespoke mechanism (see section 8.22 below).
 - Specify which operators can object to the revocation and what the objection period is – although this must not be less than 28 days from the date on which the notice was sent. Eligible operators will be those that would otherwise be able to object to a variation.
- 8.20 Expanding on the third bullet above, the operator objection mechanism also applies to revocation. See paragraph 8.27 below.
- 8.21 It should be noted that revocation of a scheme should not be seen as an 'easy get out' for either LTAs or bus operators. It is very important that both the authority and the bus operators enter into an EP with their 'eyes open'. But it is also important that the authority and operators are not locked in to a scheme that is clearly failing. With this in mind, it would be sensible to agree, as part of developing the proposals before a scheme is made, how the scheme(s) is to be monitored, managed and what the triggers are for variation and revocation. This is an important point that should be fully considered and developed between the authority and the bus operators.
- 8.22 Under s.138E at section 9 of the 2017 Act - once a scheme is introduced, it may have different bespoke operator objection mechanism(s) or agreed triggers for certain things to happen - e.g. it is automatically revoked if, say, patronage targets aren't hit. This section of the Act gives full flexibility to tailor these bespoke arrangements. These would replace the statutory voting mechanism in Regulations.
- 8.23 Or an EP could include a series of metrics that could be used to assess the success (or otherwise) of individual elements of the scheme(s). 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), 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 as 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.
- 8.24 Or simply, the EP could be time-limited and start again from scratch as the existing one becomes life-expired. The essential thing is that these issues are discussed and included, 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.
- 8.25 It is important to realise that an authority or individual operators cannot unilaterally back out of an EP – say, because there was a change in authority political leadership, or that an operator is not seeing the revenue growth that they envisaged, or because either side unilaterally decide that they no longer wish to continue to participate. The EP can only change or end in accordance with the requirements set

out in the 2017 Act and any rules laid down within it. That gives clarity to both the authority and the operators, both of which may be committing considerable resources to deliver their respective commitments.

- 8.26 The key overall point is that the scheme needs to set out mechanisms and triggers that would not require either side to compel the continuation of an EP that is failing. What those mechanisms and triggers are will vary from scheme to scheme and needs to be agreed by both sides – which is why the 2017 Act provides so much flexibility.

Operator objections

- 8.27 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.

Notice period

- 8.28 If, with agreement from the bus operators through the objection process, the authority decides to revoke a plan or scheme, they must, no later than 14 days after the revocation date, give notice of the revocation to:
- Relevant stakeholders in the plan and scheme area;
 - To all operators that would be affected by the scheme;
 - The traffic commissioners.

9. Enhanced partnership guidance – Competition issues

Background

- 9.1 The development of a plan and scheme(s) are subject to the requirements of competition law. However, it is worth stating that given that bus partnerships in various forms have been in existence since the mid-1990s, there have not been any cases where partnerships have given rise to action being taken on competition grounds. However, this does not mean that authorities should be complacent. It is very important that the development of plans and especially schemes are not conducted in a way that that is unfair to particular operators. But a distinction needs to be drawn between what is 'unfair' in the development of a plan or scheme and what may simply be unpopular with individual operators.
- 9.2 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. Although, as stated above, it is for each operator to decide their level of engagement, the authority should not make that decision for them. For example, if a small or medium sized operator (SMO) wishes to have the same engagement with the authority as a much larger one, they have a right to do so. Authorities should not engage differently with large operators because, for example, they feel that they can 'get things done' more quickly than SMOs.
- 9.3 However, this does not mean that the authority should shy away from content of plans and schemes that may not be popular or have the backing of all operators. A key difference between an EP and the practicalities of an Advanced Quality Partnership Scheme (formerly a Quality Partnership Scheme) 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.

Competition law generally

- 9.4 Competition law is designed not to protect individual businesses, but to promote and maintain competition between businesses. It is this rivalry that incentivises businesses to deliver what consumers want in terms of lower prices, better service standards and innovation.

- 9.5 Competition law as it applies to bus services stem from the Competition Act 1998 and are more specifically applied to buses under Schedule 10 of the Transport Act 2000. The CMA has also published an open letter to local transport authorities about local bus partnership arrangements made under the 2017 Act in relation to competition law [<https://www.gov.uk/government/publications/letter-from-the-cma-to-local-transport-authorities-on-bus-partnership-arrangements>].
- 9.6 Provision for the application of the competition tests where local authorities exercise their functions, including in relation to the making and varying of enhanced partnership schemes, are specifically provided for in Part 1, Schedule 10 of the Transport Act 2000. This guidance is focussed on the implications of those provisions.

Role of the authority

- 9.7 All EP schemes exist within a deregulated bus market. It is not a franchised arrangement where the authority control all aspects of bus services, from routing of individual services through to ticketing – as stated previously, this is not ‘franchising-lite’. The effect of all EPs – especially EP schemes – is to impose a suite of restrictions, set out in the scheme, on the deregulated bus market in that scheme’s geographical area.
- 9.8 The role of the authority is to ensure, for plans and all schemes, that an appropriate balance is struck between:
- a. The EP plan and schemes delivering tangible improvements to passengers;
 - b. Imposing any necessary restrictions on the deregulated bus market.
- 9.9 This balance is important and it is a legal requirement in Part 1, Schedule 10 of the 2000 Act that before making or varying a plan or scheme that the authority undertake a formal assessment about whether, in their opinion, this balance has been achieved. 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 9.8 above.
- 9.10 The authority therefore has the major role in monitoring and shaping the local bus market on behalf of consumers in its area. It needs to understand the role of competition rules in this process, and act as the facilitator in delivering necessary co-operation without unnecessarily restricting the underlying potential for competition. For example, 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 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.
- 9.11 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:
- c. It must be in the interests of passengers using local services in the EP scheme or wider plan area; and

- d. It must not impose restrictions that are not indispensable to achieving the plan or scheme objectives.
- 9.12 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), 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 (separate guidance and regulations will be forthcoming to explain this). However, if any LTA or operator is in doubt about compliance with competition issues in this area, they are free to discuss this informally with DfT first before contacting the CMA.
- 9.13 So it is clear that the overall role of the authority is to ensure that any restrictions introduced into what remains a deregulation market are appropriate. All plans and schemes should include a section in their documentation that deals with relevant competition issues and sets out:
- e. What elements of the scheme may give rise to competition issues and what those issues are;
 - f. How the authority has addressed or proposes to address those issues to ensure that restrictions are appropriate;
 - g. 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 would prevent a plan or scheme being made or varied.
- 9.14 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.
- 9.15 In the context of an EP, concerns which may arise include any aspects which:
- permit the unnecessary exchange of sensitive information;
 - reduce incentives on operators to independently set their own fares;
 - which result in operators sticking to given routes and areas; and
 - which reduce the chance of any entry or expansion.
- 9.16 Other issues may also be relevant to the competition assessment. This is to maintain the benefits of competition - i.e. that operators are incentivised to maintain an efficient and effective service at reasonable fares so as not to lose custom to existing competitors now or potential competitors in the future.
- 9.17 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 may not be as strong as originally anticipated.

Reducing operators' risk of action on competition grounds

- 9.18 As commercial undertakings, bus operators are subject to normal competition law provisions to prevent practices that harm passengers' interests, such as colluding to raise prices or geographic market sharing. If evidence is found of such behaviour, the CMA has powers to, among other things, impose fines on operators of up to 10% of group turnover. However, legislative mechanisms are in place to ensure that competition law does not prevent consumers benefitting from improvements that can only be secured through closer partnership working between the authority and bus operators. The requirements of EP schemes are imposed by the authority as conditions 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 are not breaching competition law and are therefore not at risk of CMA action or penalties. Any action taken by the CMA would be against the content of the scheme (or parent plan) itself – e.g. by requiring the authority to vary or cancel elements of a plan or scheme that it felt did not strike the appropriate balance outlined above.
- 9.19 However, this protection applies only to action by operators specifically to comply with the registration requirements set out in a scheme. Any other action by the operator that falls outside this compliance with a registration requirement is subject to all the requirements of competition law that would apply to bus services in a fully deregulated environment that is not subject to an EP plan or scheme.
- 9.20 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.

Making a complaint to the CMA

- 9.21 The role of the CMA is to determine whether anti-competitive practices – which most partnership arrangements involve – are justified. And to take action if not. So, if, after the process outlined above, an individual operator(s) remains concerned with the effect of EP proposals on the viability of their business, *they should take this up with the CMA*. Operators should not shy away from complaining to the CMA for fear of upsetting the 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 (and seeking to resolve it with them) so that any subsequent inquiries by the CMA do not come 'out of the blue'. However, 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.

- 9.22 Details of how contact the CMA can be found at: <https://www.gov.uk/guidance/tell-the-cma-about-a-competition-or-market-problem>

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

- 9.23 An EP can 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.
- 9.24 This is not a mandate for the LTA to set the price. 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

- 9.25 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

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

Commercial viability

- 9.28 It is the operators that bear the commercial risk for a multi-operator travelcard scheme and so it must be set at a price that is commercially viable for them. The pricing of the scheme should not put individual operators out of business.

Information sharing

- 9.29 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 intentions³⁹.

Pricing

- 9.30 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 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.
- 9.31 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.
- 9.32 One potential mechanism was set out by the Competition Commission in their 2011 investigation into the local bus market⁴⁰. 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:

$$\begin{aligned} \text{Multi-operator ticket fare} = & \\ & \text{average or median single fare} \\ & \text{x estimated ticket usage} \\ & \text{x discount for a multi-journey ticket.} \end{aligned}$$

- 9.33 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.

³⁹ See para 4.9 of the block exemption guidance

⁴⁰ http://webarchive.nationalarchives.gov.uk/+/http://www.competition-commission.org.uk/inquiries/ref2010/localbus/pdf/00_sections_1_15.pdf

9.34 Annex B of the 2013 DfT guidance on multi-operator ticketing ('Building Better Bus Services: Multi-Operator Ticketing')⁴¹ also provides detailed advice on how to apply this framework in practice.

Summary of Schedule 10 procedures

Part 1 test

9.35 Enhanced Partnerships and any multi-operator ticketing scheme that is a part of them, must be subject to the test in Part 1 of Schedule 10 to the Transport Act 2000. This test has three elements:

a) is there a significantly adverse effect on competition? If yes:

b) is the LTA's involvement with a view to securing one or more of the three purposes specified (known as 'bus improvement objectives'), either:

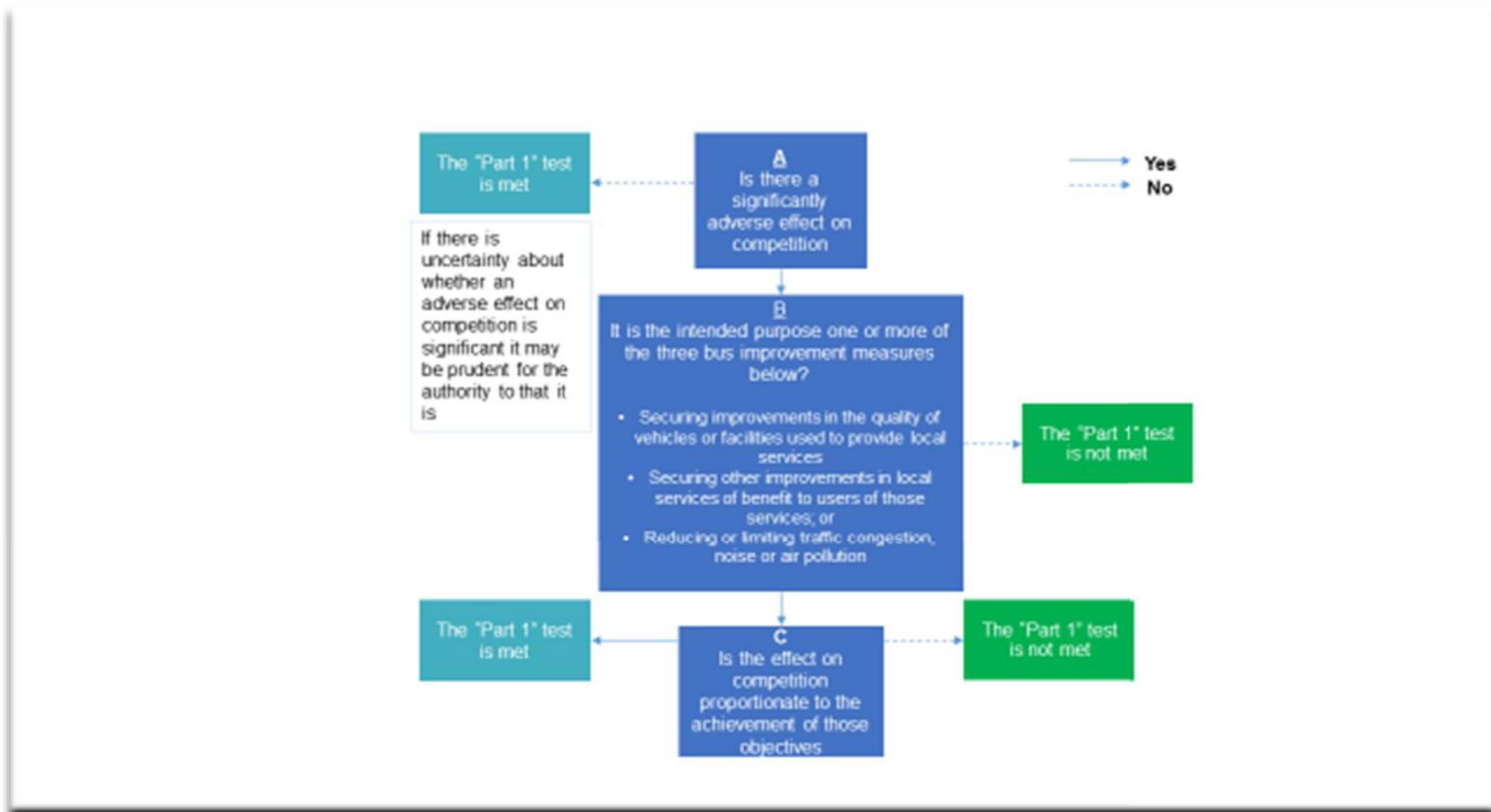
- to secure improvements in the quality of vehicles or facilities used to provide local services,
- to secure other improvements in local services of benefit to users of local services, or
- to reduce or limit traffic congestion, noise or air pollution; and

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

9.36 It is for the LTA(s) making the plans and scheme(s) to consider these issues and set out - in a document - why they believe the content of the EP schemes - meet those tests.

⁴¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141874/multi-operator-ticketing-guidance.pdf

9.37 A flow chart setting out this process is below.



Part 2 test

9.38 The Part 2 test is required where agreements or co-operation between operators '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'⁴².

9.39 In this context, if an EP imposes a route restriction that requires a degree of co-operation between operators, this arrangement should be covered by 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.

9.40 Although such arrangements do 'prevent, restrict or distort competition' they are allowed if they are covered by a Qualifying Agreement between operators which are certified by the LTA. In order to certify a qualifying agreement, the LTA must apply two tests:

- 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).

⁴² Paragraph 18(3)(a), Part II of Schedule 10 to the Transport Act 2000.

9.41 If the proposed agreement between the operators, in the opinion of the local authority. Meet these tests then they can be covered by a qualifying agreement.