

Draft Regulations made under sections 138F(10) and 138G(9) of the Transport Act 2000 laid before Parliament under section 160(2A) of that Act for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.0000

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Enhanced Partnership Plans and
Schemes (Objections) Regulations 2018

Made - - - - 2018
Coming into force - - 6th April 2018

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 138F(10) and (11), 138G(9) and (10), 138M(8)(a) to (d) and (9), 138O(11)(a) to (d) and (12) and 138P(1)(a) and (2) of the Transport Act 2000⁽¹⁾.

In accordance with section 160(2A) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Enhanced Partnership Plans and Schemes (Objections) Regulations 2018 and come into force on 6th April 2018.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Transport Act 1985⁽²⁾;

“authority” means a local transport authority whose area is in England⁽³⁾;

“local service” has the meaning given in section 2 of the 1985 Act (local services);

“operator” means an operator who provides a local service (but see regulation 11⁽⁶⁾);

“plan” means an enhanced partnership plan⁽⁴⁾;

“public holiday” means Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971⁽⁵⁾;

(1) 2000 c.38. Sections 138A to 138S are inserted by section 9 of the Bus Services Act 2017 (c.21).

(2) 1985 c.67.

(3) “Local transport authority” is defined in section 108(4) of the Transport Act 2000.

(4) “Enhanced partnership plan” is defined in sections 138A(3) and 162 of the Transport Act 2000.

(5) 1971 c.80.

“registered distance” means the distance, in miles or kilometres, which a qualifying local service normally operates in any week which does not include a public holiday—

- (a) on the basis of the particulars of its registration under section 6 of the 1985 Act(6) (registration of local services); or
- (b) where a timetable has not been provided with those particulars because the service interval is 10 minutes or less, on the basis that the service operates at intervals of every 10 minutes,

and for these purposes, “week” means a period of 7 days beginning on a Monday;

“relevant area”, in relation to a plan or scheme, means the area to which the plan or scheme relates or is to relate;

“scheme” means an enhanced partnership scheme(7);

“working day” means any day other than a Saturday, a Sunday or a public holiday.

(2) References to sections in these Regulations are, unless otherwise stated, to sections of the Transport Act 2000.

Meaning of “qualifying local service”

3.—(1) A local service is a qualifying local service for the purposes of these Regulations if it —

- (a) has one or more stopping places in the relevant area; and
- (b) is not an excluded local service.

(2) In this regulation, an “excluded local service” means—

- (a) a service or any part of a service provided under arrangements made under sections 89(8) to 91 of the 1985 Act in any case where the authority retains all the revenue from that service;
- (b) a service which is registered as a local service under section 6 of the 1985 Act but which would otherwise be an excursion or tour within the meaning in section 137(1) of that Act;
- (c) a service in respect of which a community bus permit has been granted under section 22 of the 1985 Act(9); or
- (d) a service which is a local service for 10% or less of the overall distance covered by the service.

Objections to proposal to make a plan or scheme

4. If an operator of a qualifying local service to which notice has been given under section 138F(1)(c) (notice of plan and scheme prepared) makes an objection to the plan or scheme, the objection must be made in accordance with regulation 9.

(6) Section 6 is amended by paragraph 2(2) of Schedule 10 to the Education and Inspections Act 2006 (c.40), sections 48, 49 and 65 of the Local Transport Act 2008 (c.26) and sections 11, 12 and 20 of, and paragraph 2 of Schedule 1 to, the Bus Services Act 2017 and by S.I. 2010/1158 and 2013/1644.

(7) “Enhanced partnership scheme” is defined in sections 138A(5) and 162 of the Transport Act 2000.

(8) Sections 89 to 91 deal with an authority’s obligation to invite tenders for subsidised services. Section 89 is amended by Schedule 1 to the Statute Law Repeals Act 1995 (c.44), section 10 of the Local Transport Act 2008, section 152 to, and Schedule 31 to, the Transport Act 2000 and section 60 of the Local Government in Scotland Act 2003 (asp 1). Section 90 is amended by section 70 of the Local Transport Act 2008, section 152 of the Transport Act 2000 and section 60 of the Local Government in Scotland Act 2003.

(9) Section 22 is amended by Schedule 7 to the Local Transport Act 2008 and by S.I. 2013/1644.

Objections to the making of a plan or scheme with modifications

5. If an operator of a qualifying local service to which notice has been given under section 138G(2) (notice of making plan and scheme with modifications) makes an objection to the plan or scheme, the objection must be made in accordance with regulation 9.

Objections to proposal to make changes to a plan or scheme

6. If an operator of a qualifying local service to which notice has been given under section 138L(1)(c) (notice of changes to plan or scheme) makes an objection to the changes prepared for the plan or scheme, the objection must be made in accordance with regulation 9.

Objections to the variation of a plan or scheme

7.—(1) For the purposes of section 138M, the qualifying time is the working day immediately before the day on which notice is given under section 138M(3) (notice to operators of qualifying local services of intention to vary plan or scheme).

(2) The minimum period that may be specified under section 138M(4)(d) (period within which operators of qualifying local services may object to proposed variation) is 28 days beginning with the day on which the notice is given.

(3) If an operator of a qualifying local service to which notice has been given under section 138M(3) makes an objection to the proposed variation of the plan or scheme, the objection must be made in accordance with regulation 9.

Objections to the revocation of a plan or scheme

8.—(1) For the purposes of section 138O, the qualifying time is the working day immediately before the day on which notice is given under section 138O(6) (notice to operators of qualifying local services of intention to revoke the plan or scheme).

(2) The minimum period that may be specified under section 138O(7)(d) (period within which operators of qualifying local services may object to revocation) is 28 days beginning with the day on which the notice is given.

(3) If an operator of a qualifying local service to which notice has been given under section 138O(6) makes an objection to the revocation of the plan or scheme, the objection must be made in accordance with regulation 9.

Means of making objections

9. Any objection made under regulation 4, 5, 6, 7(3) or 8(3) must be—

- (a) in writing;
- (b) sent—
 - (i) by post to the address given in the notice; or
 - (ii) by electronic means to an electronic address specified in the notice as an address to which objections may be sent; and
- (c) accompanied by information about the registered distance of all qualifying local services which the operator operates in the relevant area.

Publication of names of operators making an objection

10.—(1) An authority must publish the name of any operator who makes an objection under regulation 4, 5, 6, 7(3) or 8(3) within 14 days of the last day of the period during which objections may be made.

(2) The name of any operator to be published under paragraph (1) must be the name in which the local service operated by the operator is registered with the traffic commissioner by virtue of section 6 of the 1985 Act.

Sufficient number

11.—(1) For the purposes of sections 138F(5), 138G(4) and 138L(5), the number of persons who, on the relevant day⁽¹⁰⁾, were operators of qualifying local services in the relevant area and who have objected under regulation 4, 5 or 6 is a sufficient number if either paragraph (4) or (5) applies.

(2) For the purposes of sections 138M(5) and 138O(8), the number of persons who were operators of qualifying local services at the qualifying time and who have objected under regulation 7 or 8 is a sufficient number if either paragraph (4) or (5) applies.

(3) Operators within paragraph (1) or (2) are referred to in paragraphs (4) and (5) as “objectors”.

(4) This paragraph applies—

(a) where the total number of all operators of qualifying local services in the relevant area—

(i) is 4 or more, at least 3 of those operators are objectors;

(ii) is less than 4, all of those operators are objectors; and

(b) the registered distance of all qualifying local services operated by the objectors in the relevant area is at least 25% of the registered distance of all such services operated by all operators in that area.

(5) This paragraph applies where—

(a) the number of objectors is at least 50% of the total number of operators of qualifying local services in the relevant area; and

(b) the registered distance of all qualifying local services operated by the objectors in the relevant area is at least 4% of the registered distance of all such services operated by all operators in that area.

(6) Where—

(a) one or more operators are subsidiaries of another operator in the relevant area;

(b) two or more operators are subsidiaries of the same operator in another area,

both or all of those operators are to be treated as one operator for the purposes of this regulation; and in this paragraph “subsidiary” has the meaning given by section 1159 of the Companies Act 2006⁽¹¹⁾ (meaning of “subsidiary” etc).

⁽¹⁰⁾ “Relevant day” is defined respectively in sections 138F(12), 138G(11) and 138L(10) of the Transport Act 2000.

⁽¹¹⁾ 2006 c.46.

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe processes whereby certain operators of certain local bus services may object to the making of enhanced partnership plans and enhanced partnership schemes by a local transport authority (LTA) under the Transport Act 2000 (c.38) and for determining whether a sufficient number of those operators have objected to the making of the plan or scheme.

Regulation 3 prescribes which local services are to be qualifying local services for the purpose of these Regulations.

Regulation 4 refers to the making of objections where an LTA has given notice that it has prepared a plan or scheme. Regulation 5 refers to the making of objections where an LTA has given notice that it intends to make a plan or scheme with modifications to the plan or scheme as proposed. Regulation 6 refers to the making of objections where an LTA has given notice that it proposes to vary a plan or scheme. Regulation 7 refers to the making of objections where an LTA has given notice that they intend to vary a plan or scheme. Regulation 8 refers to the process for the making of objections where an LTA has given notice that they intend to revoke a plan or scheme.

Regulation 9 sets out the process as to how objections must be made under regulations 4 to 8 and requires that information about the registered distance of all qualifying local services operated by the objectors in the relevant area must be provided with those objections.

Regulation 10 requires the identities of all persons making objections to be published by the LTA.

Regulation 11 prescribes how it is to be determined whether a sufficient number of operators have objected in accordance with regulations 4 to 8. This is to be determined on the basis of the number of objectors as a proportion of the total number of operators in the relevant area and on the registered distance of all qualifying local services operated by the objectors in the relevant area as a percentage of the registered distance of all qualifying local services operated by all operators in that area. For this purpose, subsidiaries of the same operator are to be treated as one operator.

A full impact assessment has not been published for these Regulations. However, an assessment has been made of the impact of the Bus Services Act 2017. Copies of that impact assessment may be obtained from the Buses and Taxis Division, Department for Transport, 2/12 Great Minster House, 33 Horseferry Road, London SW1P 4DR or from the Bus Services Act page on gov.uk: <https://www.gov.uk/government/publications/bus-services-bill-impact-assessments>.