

EXPLANATORY MEMORANDUM TO
THE ENHANCED PARTNERSHIP PLANS AND SCHEMES (OBJECTIONS)
REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Bus Services Act 2017 inserted new provisions into the Transport Act 2000 that will enable certain local transport authorities to develop enhanced partnership plans and schemes with local bus operators. An enhanced partnership plan or scheme can only progress if at certain stages a sufficient number of operators of qualifying local services do not object. These Regulations specify how the objections mechanism works.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.4 The Department has reached this view because it considers that the primary purpose of the instrument relates to bus services, which is within the devolved legislative competence of each of the three devolved legislatures.

4. Legislative Context

- 4.1 The Bus Services Act 2017 (“the 2017 Act”) inserted new sections 138A to 138S into the Transport Act 2000 to make provision for local transport authorities to make enhanced partnership plans and schemes. The provisions require local transport authorities to give notice of the plan and scheme to operators of qualifying local bus services at five stages during the lifecycle of an enhanced partnership plan or scheme. The five stages are:

- where an enhanced partnership plan or scheme is first proposed under section 138F;

- where a local transport authority, or authorities, makes a plan and scheme under section 138G;
- where a local transport authority, or authorities propose to vary a plan or scheme under section 138L;
- where a local transport authority, or authorities, vary a plan or scheme under section 138M
- where a local transport authority, or authorities, revoke a plan or scheme under section 138O.

4.2 The notice provisions outlined above include provision for operators of qualifying local services in the area to which the plan or scheme relates, to object to the plan or scheme. Details of procedures for establishing a ‘sufficient number’ of operators for the purposes of preventing the next stage of a plan or scheme going ahead is set out in these Regulations.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

6.1 Chris Grayling, the Secretary of State for Transport, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Enhanced Partnership Plans and Schemes (Objections) Regulations 2018 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The 2017 Act amend the Transport Act 2000 to enable local transport authorities to work with operators to provide better local bus services for passengers through enhanced partnership plans and schemes. A key aim of these provisions is to ensure that the arrangements are mutually acceptable to the parties to a scheme and to balance the right of local transport authorities to bring forward proposals for enhanced partnership plans and schemes against the right for operators to object to what is being proposed.

7.2 Under section 138E of the Transport Act 2000 as inserted by the 2017 Act, an individual enhanced partnership scheme may make provision for its own objection mechanism to apply when the scheme is varied or revoked. These Regulations do not apply where the scheme rules make specific provision for any kind of an operator objection mechanism to apply by virtue of that section.

7.3 These Regulations apply accordingly where the scheme rules do not make such provision. They apply with respect to notices given to operators in connection with a proposal to make a plan or scheme, the making of a plan or scheme, a proposal to vary a plan or scheme, a variation of a plan or scheme and the revocation of a plan or scheme under sections 138F(1)(c), 138G(2), 138L(1)(c) and (d), 138M(3) or 138O(6) respectively. When they are applicable, these Regulations will help to determine when

and what operators may object to and to define at what point those objections are sufficient enough to prevent the next stage of development of a draft plan or scheme from proceeding.

- 7.4 The mechanism for raising objections has been designed to:
- (a) be clear and easy to use by all parties;
 - (b) ensure that any data that is used should be definitive and publicly available;
 - (c) provide that the importance given to each operator's objections is proportionate to that operator's position in the market. For example, operators who would not bear the brunt of the costs of implementing or maintaining the requirements of an enhanced partnership scheme cannot force it on others;
 - (d) prevent unwanted outcomes, such as an operator, or group of operators, seeking to manipulate the rules to gain an unfair advantage; and
 - (e) avoid an impasse where participating operators cannot deliver a clear result from the objection mechanism.
- 7.5 The objection mechanism applies at two stages of the process: (a) when a plan and scheme have been drafted or a variation is proposed, but before public consultation on them can take place; and (b) if the plan or scheme is modified after consultation, before it can be 'made' by the LTA and before a variation can be "made". It also applies if a plan or scheme is to be revoked.
- 7.6 The Regulations set out how a 'sufficient number of objections' for the purposes of preventing a plan or scheme proceeding to the next stage is to be determined. The process prescribed in the Regulations requires two different calculations based on a permutation of numbers of operators objecting out of the total number of operators in the area, and the proportion of the total operated distance that these objectors represent. If the objecting operators meet either test, so that they are deemed to constitute a sufficient number of objectors, the next stage of the development of the plan or scheme cannot go ahead. The calculations are designed to prevent a single operator with sufficient market share in the enhanced partnership area from effectively having a veto on the proposals and conversely, also prevents a significant group of operators running a tiny percentage of the market from vetoing a proposal. Because the mechanism is based on each operator's position in the market, it would also prevent a new operator registering one commercial service in the plan or scheme area in order to get an equivalent vote and block something which is in passengers' interests.
- 7.7 These Regulations also prevent different subsidiaries of a 'parent' owner of an operator from lodging more than one objection. This is to prevent operators from splitting into a number of subsidiaries in order to increase their influence over the objection mechanism.
- 7.8 The Government does not believe it would be appropriate to include certain bus services which, for example, rely on subsidies or perform a valuable social function from being taken into account for these purposes. The Regulations therefore clarify that "qualifying local services" for the purpose of the Regulations do not include the following types of services:
- a (subsidised) bus service provided by the local transport authority under section 89 to 91 of the Transport Act 1985;
 - excursion or tour services;

- a community bus service registered under section 22 of the Transport Act 1985;
- a service which is a local bus service for 10% or less of the overall service covered by the service.

8. Consultation outcome

- 8.1 A six-week consultation exercise was held, between 8 February and 21 March 2017 on a draft of these Regulations seeking views from a wide range of bodies, including the bus industry, local authorities and passenger representatives. This was supplemented by three half-day workshops when key stakeholders were able to question relevant Departmental policy officials directly on the proposals.
- 8.2 Over 80% of respondents agreed on the premise of the two tests that are used to determine when a plan or scheme can go ahead, is varied or revoked. However, over 50% of respondents disagreed with the thresholds within those tests that can prevent a plan or scheme from going ahead, being varied, or revoked. There was no consensus amongst respondents as what to any alternative values should be. Government therefore decided to proceed with the objection mechanism as set out in draft Regulations.
- 8.3 The Department also consulted as to whether the mileage measure should be based on operated or registered mileage. Over 80% of respondents agreed that registered mileage is most appropriate. The Department has recognised these concerns and amended the draft Regulations accordingly.
- 8.4 As regards the types of services that should be excluded from the operator objection mechanism, over 80% of respondents agreed with the Governments proposals and the service exclusions set out in draft Regulations therefore remain unchanged.
- 8.5 A detailed Government response on the outcome from the consultation is available from the Department for Transport's website at - <https://www.gov.uk/government/consultations/bus-services-bill-draft-regulations-and-guidance>.

9. Guidance

- 9.1 The Secretary of State has issued guidance on enhanced partnerships under the provision in section 138R of the Transport Act 2000 and this will include guidance on the objection mechanism that is to apply. Local authorities and metropolitan district councils must have regard to any guidance issued under section 138R. The guidance is published and is available at: <https://www.gov.uk/government/publications/bus-services-act-2017-enhanced-partnership-creation>.

10. Impact

- 10.1 These Regulations aim to ensure that the objection mechanism fulfils its objective of facilitating balance between the interests of local authorities and operators when designing an enhanced partnership scheme. They also aim to reduce the likelihood of the mechanism being abused to veto schemes. The impact on operators will be dependent on the extent to which the objection mechanism is used; but ultimately it is designed to ensure that operators' interests are taken into consideration. It is not a requirement imposed on operators, but a mechanism to enable operators to have an increased say in the design of an enhanced partnership schemes.

- 10.2 These Regulations are part of a package of Regulations which enable authorities to set up enhanced partnership schemes for their local bus market. The overall impact on bus operators will be dependent on the level of take-up of the powers introduced by the 2017 Act, and the specific models pursued in local areas. The cost to operators of using the objection mechanism has not been separately estimated, but is included in the estimate of implementation costs per operator of £60,000-£180,000. These include the administrative costs of the operator liaising with the authority, providing information, and taking part in any consultations. There is no impact on charities or voluntary bodies.
- 10.3 These Regulations in particular will impact on local authorities through administrative costs of planning and implementing enhanced partnership schemes. The additional costs through the objection mechanism will depend on how frequently it is used, and have not been separately estimated. The overall cost to an authority of implementing enhanced partnerships is estimated to be between £64,000 and £273,000 per area in the first year of the scheme, based on expert advice. This includes the costs of meetings to set up the scheme (£10,000-£160,000) and the costs of running a consultation (£50,000-£100,000), and potential actuarial costs for TUPE and pensions (£4,000-£13,000).
- 10.4 The impact assessment prepared to accompany the 2017 Act was updated to take account of any additional impacts of the package of enhanced partnership Regulations, and can be found at <https://www.gov.uk/government/publications/bus-services-bill-impact-assessments>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses - smaller bus operating companies.
- 11.2 No specific action is proposed to minimise the impact on small businesses. This is because it is important that all affected operators, regardless of size, are able to take part in the admissible objections mechanism.

12. Monitoring and review

- 12.1 Jesse Norman, Parliamentary Under Secretary of State for Transport, has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.
- 12.2 “Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in The Enhanced Partnership Plans and Schemes (Objections) Regulations 2018. A review of these Regulations would be disproportionate, taking into account the economic impact of the Regulations on the activities of bus operators, and would be undesirable for the particular policy reasons set out below”.
- 12.3 The outcome of the implementation of the relevant provisions of the 2017 Act, and associated secondary legislation, will be assessed as part of the post-legislative scrutiny of that Act. A provision for review has not been included in the Regulations. As these Regulations will only apply where a local authority has implemented an enhanced partnership scheme, a review of the effectiveness of the Regulations will be conducted once a number of such schemes have been introduced, or concerns are

raised about the effectiveness of the Regulations by an authority that has implemented a scheme.

13. Contact

- 13.1 Steve Blackmore at the Department for Transport, telephone 020 7944 3339 or email: Steve.Blackmore@dft.gsi.gov.uk, can answer any queries regarding the instrument.