

**EXPLANATORY MEMORANDUM TO
THE QUALITY PARTNERSHIP SCHEMES (ENGLAND) REGULATIONS 2009**

2009 No. 445

AND

**THE PUBLIC SERVICE VEHICLES (REGISTRATION RESTRICTIONS)
(ENGLAND AND WALES) REGULATIONS 2009**

2009 No. 443

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 These instruments make provision in connection with quality partnership schemes made by local transport authorities under Part 2 of the Transport Act 2000 (“the 2000 Act”), as amended by the Local Transport Act 2008 (“the 2008 Act”). In particular, the instruments define certain terms for the purposes of that legislation and prescribe procedures that are to be followed in certain circumstances where quality partnership schemes are in force.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Part 2 of the 2000 Act empowers local transport authorities to make quality partnership schemes, as set out under “policy background” below. Those provisions, and provisions in Part 1 of the Transport Act 1985 (“the 1985 Act”) relating to the registration of local bus services, are amended in particular by sections 13 to 18 and 48 of the 2008 Act. The two instruments covered by this Memorandum are needed to give full effect to the legislation as amended.

4.2 The amendments contained in sections 13 to 18 (as respects England) and 48 (as respects England and Wales) of the 2008 Act are brought fully into force by virtue of The Local Transport Act 2008 (Commencement No. 1 and Transitional Provisions) Order 2009 (S.I. 2009/107 (C.8)). With a small number of minor exceptions, those amendments are brought fully into force with effect from 6 April 2009. The power to make these regulations is already in force by virtue of section 134(1)(c) of the 2008 Act.

5. Territorial Extent and Application

- 5.1 The Quality Partnership Scheme (England) Regulations 2009 apply to England only, while the Public Service Vehicles (England and Wales) Regulations 2009 apply to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Part 2 of the 2000 Act empowers local transport authorities in England and Wales to make quality partnership schemes (“QPSs”). A QPS is a scheme under which the local transport authority makes available particular facilities in connection with the operation of local bus services, and operators of such services wishing to use those facilities must undertake to provide services to a particular standard when using those facilities.

7.2 The 2008 Act makes various amendments to the provisions about QPSs in Part 2 of the 2000 Act. The purpose of those amendments is to increase the potential for QPSs to contribute to the delivery of local authorities’ local transport policies.

7.3 In particular, the amendments to the 2000 Act mean that it will now be possible to include requirements as to service frequencies, timings and maximum fares as part of the standard of service specified in a QPS. However, the amended legislation provides that such requirements may be included only where there are no “admissible objections” from “relevant operators”. The first purpose of the Quality Partnership Scheme (England) Regulations 2009 is to prescribe the meaning of these two terms. These Regulations also prescribe the procedures to be followed where a relevant operator considers that he has an admissible objection, as well as making provision for periodic review of any requirements as to frequencies, timings and maximum fares specified in a QPS.

7.4 Amendments to the 2000 Act also enable a QPS to specify restrictions on the registration of new local bus services, or the cancellation or variation of existing ones (“registration restrictions”) where the authority making the scheme is of the opinion that such restrictions are necessary or expedient for the success of the scheme. Section 48 of the 2008 Act amends Part 1 of the 1985 Act in consequence. When an operator applies to register a new local bus service (or to vary or cancel an existing registration), and there is a registration restriction in force in relation to that application, the application is to be accepted by the traffic commissioner only where he is satisfied that the registration would not be detrimental to services provided under the scheme. The purpose of the Public Service Vehicles (Registration Restriction) (England and Wales) Regulations 2009 is to prescribe additional procedures, over and above those prescribed in section 6A of the 1985 Act (inserted by section 48 of the

2008 Act), that are to be followed in such cases. These Regulations also include consequential amendments to:

- the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986 (“the TCPI Regulations”), which require the traffic commissioners to publish certain notices, and
 - the Public Service Vehicles (Registration of Local Services) Regulations 1986 (“the Registration Regulations”), which are relevant to these Regulations in that they prescribe certain periods of notice within the registration process.
- ***Consolidation***

7.5 The Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009 contain consequential amendments to the TCPI Regulations and the Registration Regulations, as mentioned above. Further amendments may be needed to the TCPI Regulations and the Registration Regulations as a consequence of other provisions contained in the 2008 Act. Accordingly, the Department is not consolidating those Regulations at this stage, but will consider the case for doing so at a later stage in the implementation of the 2008 Act.

8. Consultation outcome

8.1 A pre-consultation draft of the Quality Partnership Schemes (England) Regulations was published in April 2008 to inform the Parliamentary passage of the Local Transport Bill. An amended draft of that instrument, together with a draft of the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations, were subsequently published for full public consultation on 23 July 2008. The consultation closed on 31 October 2008, and over thirty responses were received from local authorities, bus operators, their respective representative bodies and other interested parties. The Administrative Council on Justice and Tribunals was also consulted on the Department’s revised proposals following the public consultation, in accordance with the requirements in paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007.

8.2 The majority of respondents were broadly in favour of the proposals, though there were a variety of specific comments. A significant number of respondents sought changes to some of the timescales proposed in the draft instruments, and representatives of local authorities in particular sought amendments to the proposals relating to reviews of requirements about frequencies, timings and maximum fares. A minority of respondents sought amendments to the definitions of “admissible objection” and “relevant operator”, though bus operators and local authorities tended to hold different views about the definitions of these terms. There were also requests for greater clarity on a variety of matters.

8.3 A number of specific amendments to the procedures and time limits proposed in the draft instruments have been made in the light of consultation, including changes to the circumstances and manner in which requirements about frequencies, timings and maximum fares must be, or may be, reviewed. Numerous other comments have

been taken into account in revisions to the draft guidance, a final version of which is to be issued shortly by the Secretary of State under section 123 of the 2000 Act.

8.4 The Administrative Justice and Tribunals Council was content with the draft Regulations, subject to confirmation that the traffic commissioners would be expected to give reasons for any determinations they make by virtue of the Regulations, and that the traffic commissioners would be empowered to hold oral hearings of objections where they considered it appropriate. The Department was able to confirm both of these points.

8.5 The Government's response to the consultation on the two draft instruments is being published in parallel with the laying of these Regulations before Parliament. Copies of the response to the consultation will be available from the Department for Transport's website (www.dft.gov.uk) and in the libraries of both Houses of Parliament.

9. Guidance

9.1 The Secretary of State will shortly issue guidance to local transport authorities and metropolitan district councils under section 123 of the 2000 Act. Copies will be available from the Department for Transport's website (www.dft.gov.uk) and in the libraries of both Houses of Parliament.

10. Impact

10.1 The proposals are likely to involve some modest costs for bus operators where the local transport authority has chosen to make a QPS which includes requirements about frequencies, timings or maximum fares, and where an operator considers he has an admissible objection to those requirements. However, the procedures have been put in place partly in response to requests from the bus industry, as a protection for operators' legitimate interests. In some circumstances this protection may be particularly important for smaller operators.

10.2 The costs involved in complying with the procedures set out in the two instruments will be small compared to the benefit of the protection they afford to operators, and compared to the overall benefits that are expected to accrue to bus passengers as a result of successful implementation of QPSs.

10.3 The impact on the public sector is similarly modest in comparison to the wider public benefits that may arise from QPSs.

10.4 Impact Assessments for the two instruments are attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To protect the legitimate interests of bus operators employing up to 20 people, it is considered necessary to afford those firms the same opportunity as larger firms to

register “admissible objections” to requirements about frequencies, timings and maximum fares in quality partnership schemes.

11.3 The basis for the final decision on what action to take to assist small business was based, amongst other things, on the consultation response submitted by the Confederation of Passenger Transport, which represents operators of all sizes.

12. Monitoring & review

12.1 The outcome of the implementation of the relevant provisions of the Local Transport Act 2008, and associated secondary legislation, will be assessed as part of the post-legislative scrutiny of that Act in accordance with “Post-Legislative Scrutiny – the Government’s Approach” (March 2008, Cm 7320).

13. Contact

13.1 Matt Tyler at the Department for Transport (Tel: 020 7944 2284 or email: Matt.Tyler@dft.gsi.gov.uk) can answer any queries regarding the instruments.

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of The Quality Partnership Scheme (England) Regulations 2009	
Stage: Implementation	Version: Final	Date: 6 April 2009
Related Publications: Local Transport Act 2008		

Available to view or download at:

<http://www.opsi.gov.uk> (with the Explanatory Memorandum accompanying the Regulations)

Contact for enquiries: Matt.Tyler@dft.gsi.gov.uk

Telephone: 020 7944 2284

What is the problem under consideration? Why is government intervention necessary?

The Government has identified a need to take action to empower local authorities to secure improvements in the quality of local bus services, to deliver benefits to passengers and provide more people with a realistic alternative to the private car. The Local Transport Act 2008 contains various measures designed to achieve this end. Sections 13 to 18 and 48 amend existing legislation about quality partnership schemes ("QPSs"), with a view to increasing the benefits that can be achieved through such schemes. These provisions need to be supplemented by secondary legislation.

What are the policy objectives and the intended effects?

The Government has identified a need to take action to empower local authorities to secure improvements in the quality of local bus services, to deliver benefits to passengers and provide more people with a realistic alternative to the private car. The Local Transport Act 2008 contains various measures designed to achieve this end. Sections 13 to 18 and 48 amend existing legislation about quality partnership schemes ("QPSs"), with a view to increasing the benefits that can be achieved through such schemes. These provisions need to be supplemented by secondary legislation.

What policy options have been considered? Please justify any preferred option.

The Act provides for secondary legislation to define the terms "admissible objection" and "relevant operator", and to prescribe certain related procedures. The provisions about QPSs in the Act come into force on 6th April 2009, but are dependent upon secondary legislation being in place to give full effect to them. Accordingly, the Government does not consider that there is a viable "do nothing" or "non-regulatory" option. Alternative definitions of "admissible objection" have been considered, and in the Government's view the Regulations strike an appropriate balance.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? As part of wider post-legislative scrutiny of the Local Transport Act 2008, in accordance with "Post-Legislative Scrutiny - The Government's Approach" (March 2008, Cm 7320).

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Paul ClarkDate: 28th February 2009

Summary: Analysis & Evidence

Policy Option:	Description: Make Regulations to give full effect to the relevant provisions in the Local Transport Act 2008
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Although this assessment does not monetise the costs and benefits arising specifically from the Regulations, the impact assessment published alongside the Local Transport Bill included estimates of costs and benefits that might arise from the implementation of a typical quality partnership scheme.			
	One-off (Transition) Yrs		£ none monetised		
	Average Annual Cost (excluding one-off)		£ none monetised		
			Total Cost (PV)	£ none monetised	
<p>Other key non-monetised costs by 'main affected groups' Costs to operators include costs of submitting any objection to the local authority, and referring it to the traffic commissioner if needed. Costs to local authorities include assessing any objections received. Costs to the traffic commissioners include considering cases referred to them, including any expert advice</p>					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' See under 'costs' above. The impact assessment mentioned above suggested that an illustrative scheme might deliver present value benefits of £86 million, against present value costs of £30 million.			
	One-off Yrs		£ none monetised		
	Average Annual Benefit (excluding one-off)		£ none monetised		
			Total Benefit (PV)	£ none monetised	
<p>Other key non-monetised benefits by 'main affected groups' The benefit of these Regulations is that they provide an opportunity for bus operators to object, and to appeal to a traffic commissioner, if they consider that a proposed QPS includes requirements (as to frequencies, timings or fares) that are unachievable or commercially unviable.</p>					

Key Assumptions/Sensitivities/Risks The extent of any costs will depend on the number of authorities choosing to make QPSs. We would expect the local authority to have taken account of bus operators' views when designing a QPS, so that the need for an operator to object (and hence costs to be incurred) should not normally arise.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ n/a	NET BENEFIT (NPV Best estimate) £ n/a
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What is the geographic coverage of the policy/option?	England only			
On what date will the policy be implemented?	6 April 2009			
Which organisation(s) will enforce the policy?	Traffic commissioners			
What is the total annual cost of enforcement for these organisations?	£ negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ n/a	Decrease of	£ n/a
		Net Impact	£ n/a

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background and prior consultation

1. The Quality Partnership Schemes (England) Regulations 2009 (“the Regulations”) are necessary to support the implementation of provisions about quality partnership schemes in the Local Transport Act 2008 (“the 2008 Act”). A quality partnership scheme (“QPS”) is a scheme made by a local transport authority under which that authority undertakes to provide certain facilities (e.g. bus lanes, improvements to bus stations and bus shelters), and bus operators wishing to use those facilities must undertake to provide services to the standard specified in the scheme (which might include requirements about the quality or features of vehicles to be used). Among other things, the legislation as amended by the 2008 Act will enable QPSs to include requirements about frequencies, timings and maximum fares as part of the “standard of service” specified in the scheme. The intention is to increase the potential for local authorities to use QPSs as a tool for securing improvements to local bus services, working in partnership with bus operators in the area.
2. In the various discussions and consultations prior to the introduction of the Local Transport Bill to Parliament, bus operators had raised concerns that by extending the range of “standards of service” which could be included in a QPSs, such schemes could be used to impose unreasonable or unrealistic requirements on bus operators, and that services could be rendered unviable as a result. In response to those concerns, provisions have been included in the 2008 Act so that a QPS could specify requirements about frequencies, timings and maximum fares only if there are no “admissible objections” from “relevant operators”. There is a power for the Secretary of State to make regulations (in England) defining these terms, and prescribing the procedures for registering “admissible objections”.
3. In December 2007, the Government published draft guidance, setting out an initial statement of its intentions as to how “admissible objections” and “relevant operators” might be defined. Comments were received from local authorities and bus operators, and their views were taken into account in the preparation of the draft Regulations. A revised version of the draft guidance was published in April 2008, together with a draft of these Regulations, to inform the Parliamentary debate on the Bill. A full public consultation then took place between July and October 2008.
4. The Regulations will apply in England only, and are of no practical effect in London (where bus services are operated under contract to Transport for London). Consistent with the devolution arrangements in Wales, it would be for the Welsh Ministers to make separate Regulations about “admissible objections” in Wales. The provisions in the 2008 Act about QPSs do not extend to Scotland or Northern Ireland.
5. Costs and benefits would arise from these Regulations only where a local transport authority had chosen to make a QPS that included requirements about frequencies, timings or maximum fares.

Options considered

6. The provisions about QPSs in the 2008 Act come into force on 6th April 2009, but require Regulations to give full effect to them – in particular, to define the two terms mentioned above, and to set out certain related procedures. Accordingly, the Government does not consider that there is a viable “do nothing” or “non-regulatory” option: without Regulations, the QPS provisions in the 2008 Act cannot have full effect, and hence the intended benefits of those provisions cannot be achieved.

7. In preparing these Regulations, the focus has therefore been on:
- how best to define the two terms, so as to maximise flexibility for local authorities while also providing an appropriate safeguard for the legitimate interests of commercial bus operators; and
 - how to minimise the costs associated with the “admissible objections” process, while also ensuring that bus operators – particularly smaller operators – have a right to a fair hearing.
8. The key features of the Regulations are as follows:
- an objection would be an “admissible objection” only if made in accordance with certain requirements, and which satisfies one of two specific grounds set out in regulation 7 (in essence, that it would be either impracticable or commercially unviable for an operator to provide his existing services in accordance with the standards set out in the scheme);
 - an operator would be a “relevant operator” only if the operator was providing or had already applied to register services within the area of the scheme when the local authority gave notice of its proposal to make the QPS;
 - the question of whether an objection was “admissible”, and whether an operator was “relevant”, would be considered in the first instance by the local authority itself. Where an operator was not content with the view reached by the authority, that operator would have a right to refer the matter to the relevant traffic commissioner for an impartial determination;
 - requirements in a QPS about maximum fares would have to be reviewed at least annually by the local authority. Subject to certain exceptions, requirements about frequencies, timings or maximum fares would also have to be reviewed by the local authority when requested to do so by a specified number of relevant operators. Relevant operators would have an opportunity to register admissible objections to an authority’s proposals following any review. The provisions about reviewing requirements were substantially revised in the light of consultation, in particular to minimise the risk of schemes being disrupted by frequent requests for reviews on frivolous or vexatious grounds.
9. The main alternative option, proposed by bus operators, was that any objection made by a relevant operator should automatically be treated as being “admissible”. The Government decided not to proceed with this option, because it would give a single operator an absolute “right of veto” over any requirements about frequencies, timings or maximum fares – regardless of whether that objection was really justified, or whether other relevant operators supported the proposal. The chosen option is judged to strike a better balance between the considerations mentioned in the first bullet of paragraph 7.

Benefits and costs

10. Costs and benefits would arise from these Regulations only where a local transport authority makes a QPS that includes requirements about frequencies, timings or maximum fares.
11. The principal benefit of the provisions in these Regulations is that they would provide an important safeguard for bus operators, against the risk of unrealistic or unviable requirements being included as part of a QPS. They also make provision for reviewing requirements about frequencies, timings and maximum fares, the benefit of which is that QPSs should remain relevant to passengers’ needs, and appropriate in the light of evolving market conditions. This will help to ensure that QPSs continue to deliver their intended benefits at proportionate cost.
12. The Regulations will involve some modest costs in cases where an operator considers there to be valid grounds for objection. In most cases, it is not expected that these costs will arise, because the authority ought to have taken account of the views of operators when developing their proposals (and it should be in their interests to do so). Where costs do arise, they should be small relative to the overall costs and benefits to which the objection relates. Nevertheless, the potential costs include:

- the cost to the operator of submitting an objection to the local authority, and providing supporting information if requested. Where an objection is made, the additional cost to operators is expected to be minimal, as operators are likely to base their objection on the views and evidence they submitted to the authority in response to the consultation that must be undertaken in relation to any proposed QPS;
 - the cost to the local authority of assessing any objection, and forming a view on whether it is “admissible”. Again the additional cost should be minimal, because a local authority would already have taken an initial view on the issue in considering responses to its consultation;
 - the cost to the operator of referring the matter to the traffic commissioner, if necessary. Again, the kind of information the traffic commissioner will wish to see in support of an objection should already have been provided to the local authority;
 - the cost to the traffic commissioner of providing an impartial determination. The traffic commissioner might consider it necessary to hold an inquiry, or call on independent expert assessors (for example to assist his consideration of whether a particular set of requirements is commercially unviable). The 2008 Act and the Regulations make provision for appropriate payments to be made to such assessors.
13. The Regulations are relatively prescriptive about the procedures that are to be followed where an operator decides to object. In particular, they set out clear time limits for each stage of the process. The purpose of doing so is to help ensure that the process does not become unduly protracted, which should help to keep costs down. However, in response to concerns raised during the consultation, some additional flexibility has been built in so that certain time limits may be varied by mutual agreement between the local authority and relevant operators, while certain others may be extended by the traffic commissioner if (s)he thinks it necessary in order for the case to be dealt with justly and fairly.

Competition assessment

14. The making of a QPS could have an impact on competition in the market for bus services in the area of the scheme. This is because operators choosing to participate in the scheme (by undertaking to meet the specified standard of service) will have access to facilities that non-participating operators may not use.
15. The purpose of the provisions about QPSs in the 2008 Act is to provide a more useful policy tool for local authorities in situations where competition in the free market is not delivering an optimal level or quality of service provision for bus passengers. For example, QPSs may be particularly valuable where a more formal mechanism is needed to lock in benefits negotiated in partnership between local authorities and bus operators. The legislation includes (in Part 1 of Schedule 10 to the Transport Act 2000) a competition test which requires, among other things, that the effect on competition of making a QPS is, or is likely to be, proportionate to the achievement of the intended benefits of the scheme.
16. The Government considers that this competition test provides an adequate safeguard to ensure that any adverse impact on competition is justified. The Office of Fair Trading has powers to investigate and take action where it considers that the making of a quality partnership scheme is not consistent with the competition test.

Impact on small firms

17. Smaller bus operators play an important role in the bus market, and could be particularly affected by a proposal for a QPS. For example, it might take longer for a smaller operator to acquire additional vehicles, or take on additional staff, if that is necessary in order to meet the “standard of service” specified in a QPS.
18. The purpose of allowing operators to register “admissible objections” is to provide a safeguard against unreasonable or unrealistic requirements being imposed. If a scheme proposal failed to allow adequate time for a smaller operator (or, indeed, any operator) to acquire new vehicles or take on extra staff, that operator would be entitled to register an “admissible objection” to the local authority.

19. The Government has considered carefully the need to ensure that operators have the opportunity to gain a fair and impartial hearing where they consider that a local authority has dismissed an admissible objection. Such a hearing needs to be accessible to all operators, and particularly to smaller ones for whom the cost of seeking a judicial review of a local authority's decision is likely to be prohibitive. This is why the Regulations provide for that hearing to be provided by the traffic commissioners, who are already responsible for regulation of the bus industry and are well respected for their independence and impartiality. The traffic commissioners have existing powers, under section 54 of the Public Passenger Vehicles Act 1981, to hold inquiries in connection with the exercise of their functions.

Other impacts

20. Successful QPSs could have significant beneficial impacts other than those discussed in this impact assessment. By delivering better bus services and providing a more realistic alternative to the private car, they could deliver significant environmental benefits. They could also support government objectives for race, disability and gender equality, by promoting better access to essential goods and services, education and employment for disadvantaged social groups. Ethnic minority groups, disabled people, women and low-income households tend, on average, to have lower rates of car ownership and to use public transport more than other social groups. Improvements to local bus services are therefore likely to be of particular benefit to those groups.
21. However, these benefits arise from the provisions in the 2008 Act generally, and not specifically from the content of these Regulations. The impact assessment accompanying that legislation contains further analysis of the various impacts that are likely to arise from measures to improve local bus services. That analysis is not repeated here.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of The Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009	
Stage: Implementation	Version: Final	Date: 6 April 2009
Related Publications: Local Transport Act 2008		

Available to view or download at:

<http://www.opsi.gov.uk> (with the Explanatory Memorandum accompanying the Regulations)

Contact for enquiries: Matt.Tyler@dft.gsi.gov.uk

Telephone: 020 7944 2284

What is the problem under consideration? Why is government intervention necessary?

The Government has identified a need to take action to empower local authorities to secure improvements in the quality of local bus services, to deliver benefits to passengers and provide more people with a realistic alternative to the private car. The Local Transport Act 2008 contains various measures designed to achieve this end. Sections 13 to 18 and 48 amend existing legislation about quality partnership schemes ("QPSs"), with a view to increasing the benefits that can be achieved through such schemes. These provisions need to be supplemented by secondary legislation.

What are the policy objectives and the intended effects?

Provisions in the Act allow a QPS to include "registration restrictions" (RRs), with a view to reducing the risk of a QPS being undermined by disruptive competition from bus operators who choose not to participate in the scheme. In some areas, passengers have complained of excessively frequent and poorly-advertised changes to timetables, and RRs could also be used to help reduce such instability of service provision.

Without the ability to include RRs, the sustainability of QPSs could in some circumstances be put in jeopardy.

What policy options have been considered? Please justify any preferred option.

The Act contains the main provisions about RRs, but Regulations are also needed to give full effect to those provisions. Accordingly, the Government does not consider there to be a viable "do nothing" or "non-regulatory" option. The key options, then, are around the detailed procedures and timings that are set out in the draft Regulations. The approach taken in the Regulations, and described in the Evidence Base, is judged to provide for a workable process, while avoiding unnecessary administrative cost.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? As part of wider post-legislative scrutiny of the Local Transport Act 2008, in accordance with "Post-Legislative Scrutiny - The Government's Approach" (March 2008, Cm 7320).

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Paul ClarkDate: 28th February 2009

Summary: Analysis & Evidence

Policy Option:	Description: Make regulations to give full effect to relevant provisions in the Local Transport Act 2008
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Although this assessment does not monetise the costs and benefits arising specifically from the Regulations, the impact assessment published alongside the Local Transport Bill included estimates of costs and benefits that might arise from the implementation of a typical quality partnership scheme.			
	One-off (Transition) Yrs		£ none monetised		
	Average Annual Cost (excluding one-off)		£ none monetised		
			Total Cost (PV)	£ none monetised	
Other key non-monetised costs by 'main affected groups' Costs to operators include reduced commercial flexibility where registration restrictions are in place. Costs to operators and local authorities include the cost of making relevant representations. Costs to the traffic commissioners include costs of determining whether a particular application would be detrimental to the					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' See under 'costs' above. The impact assessment mentioned above suggested that an illustrative scheme might deliver present value benefits of £86 million, against present value costs of £30 million.			
	One-off Yrs		£ none monetised		
	Average Annual Benefit (excluding one-off)		£ none monetised		
			Total Benefit (PV)	£ none monetised	
Other key non-monetised benefits by 'main affected groups' RRs are intended to reduce the risk that operators investing in higher standards as part of a QPS do not find their position undermined by predatory competition. Reducing that risk increases the likelihood that operators will be willing partners in a QPS - and hence that the QPS can yield benefits for passengers.					

Key Assumptions/Sensitivities/Risks The extent of any costs will depend on the number of authorities choosing to make QPSs that include RRs, and on the nature of any such restrictions.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ n/a	NET BENEFIT (NPV Best estimate) £ n/a
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	6 th April 2009			
Which organisation(s) will enforce the policy?	Traffic commissioners			
What is the total annual cost of enforcement for these organisations?	£ negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ n/a	Decrease of	£ n/a
		Net Impact	£ n/a

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background and prior consultation

1. The Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009 (“the Regulations”) are necessary to support the implementation of provisions about quality partnership schemes (QPSs) in the Local Transport Act 2008 (“the 2008 Act”). A QPS is a scheme whereby the local transport authority undertakes to provide certain facilities (e.g. bus lanes, improvements to bus stations and bus shelters), and bus operators wishing to use those facilities must undertake to provide services to the standard specified in the scheme (which might include requirements about the quality or features of vehicles to be used). Among other things, provisions in the 2008 Act will enable QPSs to include “registration restrictions” (RRs), and accompanying “registration criteria” (RCs). These may be important to provide the necessary reassurance for local authorities to commit to major investment in bus priority measures or other new bus facilities, and for operators investing in new vehicles or other service enhancements. It would be for the local authority, having consulted with operators and other interested parties, to consider whether it might be appropriate to include RRs and RCs in a particular scheme.
2. The intention of these RRs and RCs is to provide a mechanism for local authorities to reduce the risk of a QPS being undermined by disruptive, inefficient or predatory competition, while not preventing healthy competition or the entry of new operators where this would not be detrimental to the working of the scheme. The threat of this kind of disruptive competition was identified in consultations prior to the introduction of the Local Transport Bill to Parliament as a significant barrier to QPSs going ahead. This is because an operator is much less likely to be a willing participant, and hence to invest in improving the standard of their services, if there is a serious risk of their market share being eroded by predatory competition or disruptive cherry-picking of services. Bus operators had raised concerns that RRs could be used to prevent operators reducing or withdrawing services for legitimate commercial reasons, and these will be addressed in statutory guidance which makes clear the manner in which RRs are expected to be used.
3. Where an operator applies to register a new bus service, or to vary or cancel an existing service registration, and there is a relevant RR in place, then the traffic commissioner has to consider whether accepting the application would be detrimental to the provision of services under the QPS. Relevant operators and relevant authorities would have the opportunity to make “relevant representations” if they considered that accepting such an application would be detrimental to the provision of services under the QPS. The application would be accepted if, and only if, the traffic commissioner decides that it would not be detrimental.
4. Although much of the necessary provision is included in section 6A of the Transport Act 1985, as inserted by section 48 of the 2008 Act, detailed procedural matters were left to secondary legislation. In December 2007, the Government published draft guidance, setting out an initial statement of its intentions as to how the proposals for RRs and RCs might work. A revised version of the draft guidance was published in April 2008 to inform Parliamentary debate on the Bill. Comments were received from local authorities and bus operators, and their views have been taken into account in the preparation of draft Regulations and accompanying guidance which was the subject of a public consultation between July and October 2008.

5. The Regulations will apply in England and Wales, but are of no practical effect in London (where bus services are operated under contract to Transport for London). This is consistent with the devolution arrangements in Wales, because functions relating to the registration of local bus services have not been transferred from the Secretary of State to the Welsh Ministers. The provisions in the 2008 Act about QPSs do not extend to Scotland or Northern Ireland.

Options considered

6. The provisions about QPSs in the 2008 Act cannot meaningfully be brought into force without Regulations setting out the procedures to be followed where an RR is in place and a relevant application is made to the traffic commissioner. Accordingly, the Government does not consider that there is a viable “do nothing” or “non-regulatory” option: without Regulations, it would not be possible to give full effect to the QPS provisions in the 2008 Act and hence to achieve any of the intended benefits of those provisions.
7. In preparing these Regulations, the focus has therefore been on how to minimise the regulatory costs associated with the “registration restriction” process, while also ensuring that the process is fair and transparent.
8. The Regulations set out:
 - the procedure to be followed by the traffic commissioner when giving notice to relevant authorities and relevant operators that a relevant application has been made;
 - the procedure to be followed by relevant authorities and relevant operators when making relevant representations to the traffic commissioner;
 - the procedure to be followed by the traffic commissioner in determining the application and giving notice of the decision; and
 - some constraints on when the registration (or variation or cancellation) may come into effect once the traffic commissioner has decided to accept it.
9. The main alternative options would be to specify different procedural requirements, and/or different timings for each stage of the process. The provisions set out in the Regulations are intended to give all parties an adequate opportunity to make representations, and to ensure the process is open and transparent, while keeping costs and timescales to a minimum. The Regulations were amended in the light of the consultation in response to points raised about some of the timescales originally proposed: certain time limits are increased by one week, and provision is made for extension of some time limits by the traffic commissioner if (s)he thinks it necessary in order for the case to be dealt with justly and fairly.

Benefits and costs

10. Benefits and costs would arise from these Regulations only where a local transport authority had made a QPS that included registration restrictions.
11. The principal benefit of the provisions in these Regulations is that they enable the provisions in the Act about “registration restrictions” to be brought into force. Where restrictions are in place, operators participating in the QPS should benefit from greater certainty of the future financial returns that will arise from their investment in higher standards of service. This greater certainty should help to support the development of more QPSs, which in turn will deliver benefits to bus passengers and provide a more attractive public transport alternative to the private car. RRs would also result in benefits to passengers where they lead to greater stability of service provision.
12. Costs resulting specifically from the procedural requirements set out in these Regulations are likely to be small relative to the overall costs and benefits of successful QPSs, but include:

- costs to the traffic commissioner of preparing and giving the notice in the form set out in regulation 3;
 - costs to those making “relevant representations”, including the cost of copying those representations to other interested parties;
 - costs to the traffic commissioner of reaching a decision and informing interested parties of that decision; and
 - costs involved in the holding of an inquiry (if the traffic commissioner determines that one is necessary).
13. In each case, the Regulations have been drafted with a view to minimising the administrative costs involved, while also ensuring that the process is open and transparent. Timescales are set out for each stage of the process, with a view to minimising the scope for an unnecessarily protracted (and hence costly) process. Efforts have also been made to build in a degree of flexibility, for example to allow the traffic commissioner to take late representations into account where this will not delay the overall process.
 14. Regulation 6 also provides flexibility for the traffic commissioner to determine a suitable date for any registration (or variation or cancellation) to come into force once a decision has been made. Certain minimum requirements are laid down to help ensure that any start date is “reasonable” from the operator’s perspective.
 15. There are other costs that may result from RRs, though these stem from the primary legislation rather than these Regulations. Those costs include reduced flexibility for incumbent bus operators where restrictions are in force. Depending on the nature of the restrictions, they could reduce the freedom of operators to vary or cancel existing service registrations (e.g. by increasing the period of advance notice that is to be given). Similarly, RRs may reduce the flexibility for new entry into the market in the area to which the restrictions relate. However, where they are included in a scheme, these restrictions are likely to be important in ensuring the stability of the QPS and providing reassurance to local authorities who are investing in bus priority measures and other new bus facilities, and to operators who are investing in new vehicles and other improvements. Moreover, any scheme will have to satisfy the competition test mentioned below, under which any adverse impact on competition must be proportionate to the benefits – providing an important safeguard.

Competition assessment

16. RRs could have a specific effect on competition as they could in effect prevent the registration of new services in certain circumstances, and/or constrain the flexibility of operators participating in the scheme to vary or cancel existing registrations.
17. Statutory guidance to local authorities will take this into account, emphasising that RRs are intended to be used specifically as a mechanism to restrict detrimental competition – while avoiding constraints on competition where that would be in the interests of passengers. The design of any restrictions, and accompanying criteria, will clearly be important in this respect, as will the traffic commissioner’s role in deciding whether a particular application would be detrimental.
18. In designing any restrictions and criteria, local authorities will need to be satisfied that any adverse effect on competition resulting from the making of a QPS is, or is likely to be, proportionate to the achievement of the intended benefits of the scheme. The impact of any RRs and RCs will need to be taken into account by the local authority in satisfying itself that this condition is met. The arrangements for allowing entry by new bus operators into a QPS will be important.

19. The Government considers that this competition test, which is contained in Part 1 of Schedule 10 to the Transport Act 2000, provides an adequate safeguard to ensure that any adverse impact on competition is justified. The Office of Fair Trading has powers to investigate and take action where it considers that the making of a quality partnership scheme is not consistent with the competition test.

Impact on small firms

20. The opportunity to register services in areas where RRs and RCs are in force, and the associated procedures, would apply equally to all bus operators in the area, regardless of size or other characteristics. On the assumption that smaller operators have fewer registered services, the expectation is that smaller operators will incur any such costs less frequently than their larger counterparts. Accordingly, the provisions in these Regulations are not expected to have a disproportionate impact on small operators compared to larger ones. In view of the need for fairness, openness and transparency, it would not be appropriate to apply different requirements for smaller operators.

Other impacts

21. Successful QPSs could have significant beneficial impacts other than those discussed in this impact assessment. By delivering better bus services and providing a more realistic alternative to the private car, they could deliver significant environmental benefits. They could also support government objectives for race, disability and gender equality, by promoting better access to essential goods and services, education and employment for disadvantaged social groups. Ethnic minority groups, disabled people, women and low-income households tend, on average, to have lower rates of car ownership and to use public transport more than other social groups. Improvements to local bus services are therefore likely to be of particular benefit to those groups.
22. However, these benefits arise from the provisions in the Act generally, and not specifically from the content of these Regulations. The impact assessment accompanying that legislation contains further analysis of the various impacts that are likely to arise from measures to improve local bus services. That analysis is not repeated here.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No