URBAN TRANSPORT GROUP

Consultation response

Bus Services Bill guidance

Department for Transport

March 2017

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Content

1. Introduction

About the Urban Transport Group

The Urban Transport Group brings together the public sector transport authorities for the largest city regions (West Yorkshire Combined Authority, Transport for London, Transport for Greater Manchester, Transport for West Midlands, North East Combined Authority, Merseytravel, South Yorkshire PTE).

2. Response

AQPSs (Annexes D and E)

1. Do you agree with the proposal to replicate, for an AQPS, the existing Quality Partnership Scheme regulations? Please explain your reasons.

We welcome the replacement of Quality Partnership Schemes with the new Advanced Quality Partnership Schemes. The existing arrangements work well and have, in some areas, delivered significant improvements for bus passengers.

2. Do you agree with the proposal to allow an authority to include, in an AQPS, any facilities that are more than 5 years old if no operator objects? Please state your reasons.

Facilities between 5 and 20 years old can already be included in a QPS with operator agreement and we assume '5 years old' should have read '20 years old', a proposal which we fully support. Since most bus infrastructure has an inherently long-life, the 20-year limit is an artificial constraint that is unrelated to any real-world consideration. It is also perverse and arbitrary in a situation where operators agree to the limit being wavered.

We welcome the removal of the requirement for authorities to include new facilities and agree that this provides greater flexibility for an AQPS to be formed and may therefore increase their usage. Some existing facilities are still in very good condition and in prime locations to deliver benefits for staff and customers and therefore these should be utilised to best effect. The ability to progress such a partnership arrangement without the requirement to find budgets for new facilities is welcomed as a sensible and practical measure.

In our view, operator consent for inclusion of facilities more than 5 years old is unnecessary. The guidance and regulations should be amended to allow an authority to include facilities of any age in a AQPS as long they are in good working order without any specific consent (or alternatively, having to address any objections) from operators.

Franchising Service Permits (Annex F)

3. Do you agree with the procedure that authorities must follow before they can start to accept applications for service permits? Please explain your reasons.

No.

We fully support the principle of a service permit system as an essential tool to maintain service quality and continuity during the transition from a deregulated to franchised system. Such a system will enable franchising authorities to safeguard cross-boundary services and ensure continuity of cross-boundary travel for passengers. It will allow authorities to use non-franchised services to perform essential roles within the network.

However, for reasons explained below, we are concerned that the scheme as currently proposed involves an unnecessary level of bureaucracy and inflexibility that will hinder an authority's ability to use the permit scheme effectively.

The draft regulations include various conditions that must be satisfied before franchising authorities can grant service permits. This seems to go beyond the power in section 123U(3) and may conflict with section 123P(2), which simply provides that where a franchising scheme is in operation, the franchising authority may grant a service permit on application.

A franchising authority must develop a 'service permit scheme' setting out the procedure that must be followed by operators when applying for service permits, information that operators must submit with their applications; the fee that must accompany an application; and the period within which a franchising authority will make a decision; and the period which will expire before the permit becomes effective.

The level of detail which must be fixed in this scheme could be problematic if it limits the discretion and flexibility of the franchising authority in making service permit decisions.

We consider it essential that an authority has the flexibility to update and vary its service permit scheme without having to complete the above process for every variation and/or update.

4. Do you agree with the categories of conditions (listed in paragraph 3.13) that can be attached to service permits? Please explain your reasons.

Yes, although we do not believe that this should be an exhaustive list. Franchising authorities should have the ability to develop service conditions that can relate directly to particular local circumstances and provide a stable operating environment for operators' and passengers' benefit.

We agree with the types of conditions included in the list and consider them all to be fundamental to facilitating a smooth transition from a deregulated to a franchised market, preserving passenger continuity for some highly valued services.

However, we are concerned that the list of conditions in the draft regulations in Annex F will be an exhaustive list, providing no discretion to the franchising authority in relation to the conditions that are appropriate for its area.

This appears to be unnecessarily restrictive given the fact that a franchising authority also has an obligation to consult bus operators and stakeholders in its region prior to attaching any of the conditions to its service permits.

A more practicable approach would be to keep the list of conditions specified in the draft regulations but also make provision in the Bill and draft regulations for franchising authorities to have the discretion to make their own bespoke conditions, if considered appropriate by

them, for the local services in its region. These conditions would of course be subject to satisfying the consultation procedure specified in the Bill and regulations.

This is more akin to the discretion that is exercised by TfL in relation to service permit conditions as TfL is not subject to this level of constraint and is free to add conditions as they think fit in accordance with the London Service Permit system contained in sections 185 to 195 of the Greater London Authority Act 1999.

We are keen to ensure permitted services contribute properly as part of the network, primarily in providing cross boundary movements. Both the Bill and guidance already place clear obligations on an authority to take account of the impact of any scheme on neighbouring authorities and services. In addition, the regulations provide that any decision not to grant a permit is also open to challenge through an appeals procedure and therefore we believe the permit system will contain appropriate checks and balances.

We feel that this restriction goes against the spirit of devolution. It seems odd that there is a desire for the Secretary of State to be seeking to maintain such absolute control over such local matters, given that the power to franchise is being devolved, to Mayoral CAs or via a process that provides for Secretary of State approval. In either case Government has referred to being satisfied that the respective LTA has the competence and governance to properly use such powers. With this in mind, we suggest the regulations be amended to provide for maximum local discretion with regard to provision for new service conditions.

5. Should other conditions be added? If so, what should these be?

Yes.

We note that the current conditions do not include a category requiring specific routes or stopping points to be used or avoided and we consider this to be an important consideration for authorities and should be included as a condition. We consider it important that an authority can limit or specify stopping points in order to protect passenger interests.

The current conditions do not specifically enable the franchising authority to require adherence to a code of conduct, including a transitional code of conduct to service operators as a condition of their permit. Although ‘customer service standards’ and ‘operational standards’ are included in the long list in the draft regulations, it is unclear if these are broad enough to encompass these codes of conduct. We believe that adherence to a code of conduct should be included as a condition in order to maintain a uniform standard across the bus network. Without this condition, delivery and performance cannot be influenced and this may negatively impact on passengers.

Furthermore, it is unclear if these conditions allow authorities to specify frequencies and we believe that authorities should be empowered to do this to ensure the services complement the franchised area as far as possible. We suggest this is included as a specific condition or guidance makes it clear that the scope of the conditions can include factors such as this.

We note that TfL is able to consider how a service permit application will impact on the strategic aims and objectives of the bus network and we consider a similar condition to be appropriate for these regulations and should be available for all parts of the country. We therefore suggest that this consideration is replicated for the service conditions in these regulations.

Critically, we note that the conditions do not provide for revenue sharing, allocation and apportionment arrangements to be attached as conditions to be agreed in a fair and equitable way between transport authorities and individual operators. We consider this fundamental to ensuring that services are maintained and that there are no negative consequences for passengers. There may be some complex cross boundary cases that require a bespoke solution and revenue arrangements will assist this and help to protect the continuity of services for passengers.

In addition, we consider it important that a condition is included allowing transport authorities to prevent operators from using competing ticketing systems. This will help to preserve simplicity for passengers.

We also consider it important that the conditions provide for operators to disclose patronage and revenue data. A franchised scheme may evolve and change over time and the conditions listed in the regulations do not reflect the changing nature of the routes and services and this information will be useful for transport authorities when reviewing the service routes.

6. Do you agree with the procedure for revoking and suspending service permits? Please explain your reasons.

No.

Where a service permit has been suspended with immediate effect because of a danger to the public, draft regulation 5 (4) (a) appears to oblige the franchising authority to set out the measures that the operator would be required to put in place to have the suspension lifted, but draft regulation 5 (4) (b) also requires them to specify the date on which the suspension would be lifted and regulation 5 (4) (c) requires them to specify the arrangements for the authority to review the suspension.

This could be problematic as there is a presumption that the franchising authority will lift the suspension in circumstances where a franchising authority may understandably be wary about doing so and would wish to exercise more discretion than seems to be permitted under the regulations.

We also note that authorities are only able to revoke a permit with immediate effect if the service poses a danger to the public. For all other circumstances, the authority must give 56 days' notice prior to revoking a service. This presents a risk if there is significant operator misconduct as authorities will have to wait 56 days which we consider to be inappropriate and impractical.

If an operator is behaving disruptively or failing to comply with its service permit conditions, the authorities will be unable to revoke or suspend the permit unless there is a danger to the public. It is unlikely that this threshold is going to be met for most instances of misconduct and therefore authorities will be unable to take action for non-compliance or misconduct until a 56 notice period has been served.

However, disruption short of causing actual danger to the public could still cause significant disruption to services, passengers and the wider travel market.

We consider that it would be better to include provision for authorities to immediately suspend or revoke a service permit for material failure to comply with the service permit conditions. 'Material failure' is often defined as either one major breach or a series of more minor breaches that have created a pattern of repeated failure. Authorities would be better equipped to safeguard the network and protect passengers' interests in these circumstances.

7. Do you have any further comments on the service permit regulations?

Yes.

We are concerned that the service permit appeals process has been completely omitted from the draft regulations and the current consultation. It is a concern to us that these arrangements have not been confirmed and may further compromise the LTAs discretion and authority in this regard.

In addition, we believe that an authority should be able to refuse a service permit where it will abstract revenue from it.

We consider a robust and timely appeals process to be fundamental and the current uncertainty poses a significant risk to implementing a franchising scheme. A delayed appeals process will significantly impact on an authority's ability to safeguard the network for passengers.

We would like to understand the anticipated timetable for omissions such as this one. We would like to be able to provide comments on the draft regulations.

We also believe that wider strategic considerations should be able to be taken into account by the authority e.g. Local transport plan considerations, bearing in mind the need to much more closely integrate bus services with other travel modes. As suggested above, these sorts of considerations are available to TfL and we consider it entirely appropriate to provide these for all relevant franchising authorities.

Franchising: Transitional provisions (Annex G)

8. Do you agree that the provisions to enable services to be registered at short notice during the transition period are useful? Please explain your reasons.

Yes, however they should also include varied services.

We agree with the provisions to allow authorities to maintain a stable network for bus passengers in their area as far as possible during any transitional period and consider these provisions vital to facilitating continuity of service for passengers.

However, we note that there is no provision for an authority to be able to register a service at short notice in the event that an operator varies rather than completely ceases its service. Varying a service can significantly impact on passengers and we believe that there should be a way of protecting passengers' interests in these circumstances by mitigating against this.

We therefore suggest including provision for authorities to be able register a service at short notice if a service is significantly varied.

Regulation 6 on page 77 of the consultation document lists the circumstances in which the regulations apply and refers to Section 6 of the 1985 Transport Act and other acts; however, it is unclear how this section and exemptions are to be applied to the Bus Services Bill and service permits and clarification here would assist authorities.

9. Do you agree with the processes that authorities must follow before they can extend the variation and cancellation notice periods. Please explain your reasons.

No.

We are concerned that there is the real potential for a period of time to arise within which bus operators can deregister services before the new franchise services will be able to commence. One consequence will be that this could cause disruption that will negatively impact existing bus passengers. Guidance and Regulations can better help minimise the opportunities for passenger disruption.

Section 123H(4) of the Bus Services Bill states that a scheme may not specify a period of less than six months for its start date following the notice that the local service contract has been awarded by the franchising authority.

The draft regulations in the DfT's public consultation document on page 77-78, relating to deregistration of local services by operators, state that franchising authorities will have the ability to set a notice period of up to 112 days for operators wishing to de-register their services following the publication of a franchising scheme.

The shortfall between the two time periods is likely to negatively impact on passengers and therefore we believe that the time periods should be more closely aligned.

We agree that six months is a realistic mobilisation period for operators and therefore we consider it more appropriate for draft Regulation 9(4) to be amended to state, 'A franchising authority or authorities must not specify a period of time under paragraph 3(b) or (c) that is longer than 180 days (approx. 6 months).'

Another observation we have is that whilst the extension for de-registration of services following a notice by a franchising authority is of course helpful to authorities, the practical enforcement of this is unclear.

Will it be the Traffic Commissioner who monitors and regulates compliance with this notice period? What will be the sanction if an operator fails to adhere to it and removes its services prior to the end of the extended deregistration period?

The risk is disruption to the network for passengers during this transition period as whilst the authority will have provision to use short notice periods to register a new replacement service, implementing a new service in very short timescales will be not always be possible.

Therefore we suggest that reference to who will be enforcing the extended deregistration period and the sanctions for non-compliance are included in the regulations as this will act as an important deterrent.

We are encouraged by the fact that these issues were identified at Committee Stage in the House of Commons on Tuesday 14 March 2017. We note that in response to the issues raised, the Minister also said, 'I recognise that there may be concerns about the behaviour of operators during the transitional period.'

We hope that this means the above issues are given further attention in the guidance and regulations.

Where an authority decides to vary or revoke a franchising scheme so that it no longer applies in a particular area there will be a period of time before the variation or revocation takes effect. To ensure continuity of service, the draft regulations propose that applications for registration that are made by bus operators during that period should become effective at the point at which the variation or revocation takes effect.

10. Do you agree?

No.

We do not anticipate that there will be a significant need for this; however we agree that measures are required to ensure services are maintained and passengers are not negatively impacted by any change in the running of the network.

The overriding principle should clearly be that of maintaining continuity of service. However, the protection of public funds is also a consideration.

It is difficult to foresee all situations and to devise regulations that cater for those situations. Furthermore, the variation / revocation of a franchising scheme could be a phased process, adding to the range of possibilities that the regulations need to address. This suggests the need for a degree of flexibility, with the relevant LTA given the necessary discretion to negotiate commencement dates for newly registered services.

We therefore propose that the regulations allow the date at which registrations take effect to differ from the date of franchise variation/revocation with the consent of the relevant LTA(s).

Franchising and enhanced partnerships: Transfer of staff TUPE (Annex H)

In order for employees to transfer to new employers under TUPE, the Bill requires them to be designated as 'principally connected' with services that are subject to a contract or agreement. The draft regulations set out an approach whereby the authority should look to reach consensus locally with operators and representatives of employees about the principles for determining whether a person is 'principally connected'. We recognise that this may not always be possible, and the draft regulations also provide a definition of 'principally connected' that can be used as an alternative.

11. Do you agree with the process set out in the draft regulations for determining whether a person who is 'principally connected' with services that are subject to contract or agreement? Please explain your reasons.

No response as it was not possible to fully amalgamate the views of our members in the time available.

12. Where agreement cannot be reached locally, do you agree that both the employee's time spent assigned to the affected local services and their time in

continuous employment are the appropriate factors for determining whether they are 'principally connected'? Please explain your reasons.

No response as it was not possible to fully amalgamate the views of our members in the time available

13. If you agree that these are appropriate factors:

(a) What minimum proportion of a person's time should be spent assigned to affected local services for them to be considered as 'principally connected' (40%, 50%, 60% over 60%, or a different figure)?

(b) What is the minimum time an employee should spend in continuous employment for them to be considered as 'principally connected' (e.g. 3 months, 6 months, 9 months, 1 year, greater than 1 year)?

No response as it was not possible to fully amalgamate the views of our members in the time available

14. Do you agree with arrangements to enable authorities to request employee-related information from operators?

No response as it was not possible to fully amalgamate the views of our members in the time available

15. Do you agree with the process for allocating transferring staff?

No response as it was not possible to fully amalgamate the views of our members in the time available

16. Do you have any further comments on the draft TUPE regulations?

No response as it was not possible to fully amalgamate the views of our members in the time available

Franchising and enhanced partnerships: Pensions (Annex I)

17. Do you agree with the proposals for protecting an employee's pension rights? Please explain your reasons.

No response as it was not possible to fully amalgamate the views of our members in the time available

18. Do you have any further comments on the draft pensions regulations?

No response as it was not possible to fully amalgamate the views of our members in the time available.

Franchising and enhanced partnerships: Information from operators (Annex J)

19. Do you agree that authorities should be able to request the following types of information in connection with franchising functions:

- **Information about fixed and variable costs of operating services?**
- **Information about the vehicles used to provide services?**

Yes.

We fully support the provisions that enable authorities to request the above information from operators in connection with franchising functions.

It is sensible and prudent for authorities to be as fully informed as possible and this information is particularly important.

Both information about fixed and variable costs of operating services and information about the vehicles used to provide services will be readily available to bus operators and therefore the obligation will not place any onerous obligations on them.

20. Should other categories be added? If so, what should these be?

Yes.

We note that the statutory guidance on page 112, paragraph 12 has included a new obligation for authorities to consider 'journey speeds and reliability' when developing the case for change in its region. In order for authorities to be able to satisfy this additional obligation, authorities must be able to request this data from incumbent bus operators in their region.

We acknowledge that LTAs either directly or by working with relevant Highway Authorities, have access to data regarding general traffic however, bus operators in order to ensure that they comply with their obligations, measure bus performance and much of this data is not available to the LTAs.

Currently 'journey speeds and reliability' is not provided for in the list of information that authorities may request from bus operators. Without this data authorities will be less able to satisfy this additional consideration.

We therefore suggest that an additional provision is made in the regulations for 'information about journey speed and reliability for those local bus services'. This makes the process fair for all parties. We note that this issue was raised at Committee Stage in the House of Commons on 14 March 2017 and we hope that the guidance and regulations are amended to reflect this.

In addition, Section 143A (3) does not currently give authorities the ability to require information about bus services in neighbouring areas. As the business case guidance specifically requires franchising authorities to consider the impacts of franchising on neighbouring authorities and services and transport in their areas, this omission is material and should be rectified by adding provision in the regulations for 'information about local bus services in neighbouring areas.' We are encouraged by the fact that this issue was raised during Committee Stage in the House of Commons on Tuesday 14 March 2017. We hope that the guidance reflects these concerns.

The obligation on authorities here is significant and we concerned that authorities are being asked to make assumptions in relation to the future private market behaviour of bus operators which is exposing an authority to unnecessary risk. It implies that authorities must make these assumptions as part of its assessment and therefore the validity of its

assessment is in danger of being compromised by an onerous duty to make assumptions on areas that lie outside an authorities direct knowledge.

As the business case guidance specifically requires franchising authorities to consider the impacts of franchising on neighbouring authorities and services and transport in their areas, this omission is material and should be rectified by adding provision for information about local bus services in neighbouring areas.

Serious consideration will need to be given to the information that bus operators will need to disclose in order for authorities to be able to fulfil the obligations set out in the statutory guidance. Large operators with complex group structures will be required to make it clear to authorities how their operations are organised as company accounts can disguise key aspects of a large groups' operations and it can often be unclear where the key success areas are and alternatively, it can be unclear which the poorly performing areas are. In addition, small and medium sized operators will need to disclose a significant amount of operational data as currently; authorities have no way of accessing their private accounts.

This appears to be the only practicable way of allowing an authority to fulfil the obligations set out in the statutory guidance.

We note that whilst provision is made for 'Information about persons employed by the operator in the provision of those local services' at Section 143A 3(e) of the Bill, pensions information is not explicitly referred to and we consider this an important inclusion that may be best stated in the guidance and regulations to avoid any confusion on the issue of disclosure of this type of information. We consider it essential that authorities can request pension information for those employees likely to be in scope for a TUPE transfer. We are encouraged by the fact that this uncertainty was highlighted at Committee Stage in the House of Commons and hope that this concern will be addressed in the guidance and regulations.

21. Do you agree that authorities should be able to request the types of information (listed in paragraph 7.12) in connection with enhanced partnerships?

Yes. The information is essential in understanding the current performance o the services in question from a financial and service delivery perspective. This information is needed to analyse performance and financial viability.

22. Should other categories be added? If so, what should these be?

Yes.

LTAs should have access to the same information that can be requested when commencing an assessment of bus franchising. There are broadly two reasons for this.

Firstly, development of an effective and durable EP will require the LTA to have a detailed understanding passenger journey patterns in order to agree service patterns that are in passengers' interests; to have a good understanding of operators' costs and revenues ensure the scheme is financially sustainable for operators; and to all of this data to verify the validity of any operator concerns and, potentially, to arbitrate between operators (e.g. where there is limited road capacity for services).

Secondly, development and implementation of an Enhanced Partnership is a major undertaking for an LTA and could require significant financial investment. It will therefore involve financial risks for the LTA but, once created, it is a long term commitment from which the LTA cannot unilaterally withdraw. Effective and prudent use of limited public funds will require a robust business case to be developed; in turn, this will require robust and detailed data, including data on operator costs, revenue and passenger journey patterns.

We therefore think that, when developing an Enhanced Partnership, LTAs should have access to the same information that can be requested when commencing an assessment of bus franchising.

23. The draft regulations do not currently allow authorities to request revenue information in connection with an enhanced partnership scheme. Is revenue information necessary to developing enhanced partnership proposals? Please explain your reasons.

An Enhanced Partnership could be a significant intervention and could require a LTA to invest considerable capital and revenue into one or more EP schemes. In addition, an LTA cannot unilaterally withdraw from an EP if the majority of bus operators object, which means that the Plan could be a very significant long term commitment. Such investment and commitment would need a business case before the LTA could agree to the EP that contained it, and such a business case would need good data. This may, or may not be, provided voluntarily by operators in advance of the EP being agreed – it is unlikely to be provided voluntarily by those operators that oppose the scheme, who could provide a significant minority of the operating market. It is simply not the case that an LTA 'will not be taking on new financial risks' in an EP (as para 7.11 claims), or at least it won't be in the case in more ambitious EPs. Instead the lack of data in this key area could put off LTAs from investing in EPs that maximise benefits to bus passengers.

To give the LTA sufficient certainty in its business case for investment, operator revenue data should be available to drive that business case prior to agreeing a EP plan / initial schemes. That data can be subject to confidentiality clauses and clauses that restrict the purpose of its use so that it cannot be used for a franchising assessment, in advance of the formal franchising process being enacted.

We illustrate the issue with three examples.

Firstly, consider the implementation of a multi-operator ticketing scheme at a price fixed within the EP. While this price will be agreed by the majority of operators and the LTA, there remains the risk that the price agreed may not be sustainable in the long run and needs to be significantly altered. There remains a further risk that the imposition of a multi-operator ticket on the minority of operators not supportive of the Partnership may see them exit the market or refuse to comply with the Partnership plan. These outcomes could lead to worsened bus networks available to bus passengers, and see the LTA, as a partner to the EP, suffer reputational risk. A prudent LTA would wish to see fares and patronage modelling underpinned by up-to-date existing information about passenger numbers and ticket revenues, in order to be assured that the ticketing proposals are robust and achievable. It is not sufficient for a LTA to take this on trust, or have to rely on information sourced voluntarily from operators, the provision of this information must be mandatory.

Secondly, consider the inclusion of a route frequency restriction within an Enhanced Partnership (as described at paragraph 47 of the Guidance in Annex P). This restriction might see buses on a sensitive high street reduced from 15 per hour to 8 per hour. Despite the best endeavours of all partners, the operators may be unable to reach agreement on whose buses should be withdrawn/diverted and whose should remain (this is especially likely if one of the operators was a minority objector to the EP). In these circumstances, information about patronage, revenues and operational costs is required to allow an assessment of: (i) which bus services should remain on the sensitive street, and the accessibility offered to surrounding areas of the town retained; (ii) which bus services should be diverted to another less sensitive nearby street, and which surrounding communities will see a diminished level of accessibility; and (iii) which bus services will be withdrawn, and which surrounding communities will lose their bus services. Revenue and cost data are vital to making such judgements, otherwise the result of a route frequency restriction could be to reduce bus services on a sensitive street in a way that does not minimise impacts on bus passengers.

Thirdly, as a practical example of the need for the data: the Leeds Public Transport Investment Programme which incorporates the £173.5m of DfT funding, includes a new partnership arrangement between Authorities and at least the three largest Bus Operators in the city. This new arrangement has the potential to be delivered through the new legislative framework options in the bill, such as either AQPS or EPS.

The programme objectives include doubling patronage in Leeds. A series of corridor based interventions are proposed as well as new vehicles, information and improvements to services (further information is in the December 2016 SOC submission to DfT). WYCA and LCC will be working together to coordinate, monitor and manage progress of the overall programme and the Bus Operators are core to the programme delivery. Yet as commercial organisations the operators are unable to share key information with each other in developing schemes and also in terms of monitoring/evaluating impacts. WYCA/LCC are therefore the only organisations in the partnership which are able to bring together the overview of the programme. However to understand performance against the objectives, information on demand and revenue will be required to establish whether the “doubling bus patronage” target is being delivered. The EPS data provisions in the guidance as currently drafted, prohibit the ability to develop the schemes and identify/assess the delivery of the objectives of the programme.

In conclusion, it is accepted that an Enhanced Partnership with relatively few commitments, which can be regarded as low-risk and highly deliverable by the partners, might not require a business case to be undertaken, and information to feed into that business case may not be required. But for an Enhanced Partnership that includes higher impact and higher investment cost proposals, such a business case (and information from operators to support that business case) will be necessary. We therefore conclude that it is vital that LTAs have the option to request information for an EP that is broadly equivalent to the information requested for a bus franchising scheme – even if for some EPs this option may not be exercised.

Finally, we are aware that there are concerns about the use of these data for other purposes, such as developing a business case for bus franchising. Firstly, a LTA wishing to develop an assessment of bus franchising would have access to the data anyway, either (assuming the Government Committee Stage amendment #5 is approved by Parliament) because it has automatic access as a mayoral combined authority or because it has successfully received consent from the Secretary of State. Secondly, it is intended that use of the data provided will be restricted to the purpose for which it was requested, and will otherwise remain confidential. So any LTA that may wish to use the data for another purpose would be unable to publish the outcome of that assessment, or make any public decisions based upon it. Using the data to assess bus franchising would be a waste of time that would be better spent receiving consent from the Secretary of State to obtain the information formally. For these reasons, we consider the risk that information about operators' revenue and cost might be used to inform another aspiration of the LTA to be without foundation, and capable of being prevented through a confidentiality agreement.

Should the regulations make provisions for LTAs considering an EP to obtain cost and revenue data, a timescale for operators to provide that data will need to be defined.

24. If revenue information is necessary for developing enhanced partnership proposals, when should local authorities request this information from bus operators? Please explain your reasons.

Yes.

The ability of authorities to request information from operators for developing enhanced partnership proposals should be similar to the arrangements in relation to franchising. It is essential that time frames are reasonable for bus operators to adhere to without delaying intentionally or otherwise an authority from obtaining the information.

Enhanced partnerships: Operator objection mechanism (Annex K)

25. Do you agree that the following factors should be taken into account in the operator objection mechanism:

- **Market share by mileage?**
- **Number of operators?**

No response to this question as we do not have a consensus on this point.

26. Should other factors be taken into account? If so, what should these be?

See response to question 25.

27. Do you agree that the operator objection mechanism should have two separate tests, with proposals unable to progress if either are satisfied? Please explain your reasons.

Yes. It does not appear possible to have a single criterion that achieves both the objectives referred to in paragraph 8.17 of the consultation document.

28. For test one, do you agree that:

- **objecting operators should represent a minimum 25% of mileage?**
- **the 25% of mileage should be made up of at least 3 operators?**

No response to this question as we do not have consensus on this point.

29. If not, what alternative values would you propose? Please explain your reasons.

See response to question 28.

30. For test two, do you agree that:

- **At least 50% of operators would be required to object?**
- **Those 50% of operators should represent at least 4% of mileage?**

No response to this question as we do not have a consensus on this point.

31. If not, what alternative values would you propose? Please explain your reasons.

No response to this question as we do not have a consensus on this point.

32. Do you think that the mileage measure should be based on:

- **operated mileage; or**
- **registered mileage? Please explain your reasons.**

Given we do not have a consensus in response to question 25 we also do not have a response to this question.

33. Do you agree that the following types of services should be excluded from the operator objection mechanism?

- **Operators running services under 'gross cost' contracts**
- **Excursion or tour services; and**
- **Services with less than 10% of mileage in the enhanced partnership area.**

See response to question 32.

34. Should any other types of services be excluded? Please explain your reasons.

No response to this question as we do not have a consensus on this point.

35. Do you have any further comments on the proposed operator objection mechanism?

No response to this question as we do not have a consensus on this point.

Information on varied or cancelled services (Annex L)

Information to be provided and applications caught by the requirements

36. Do you agree that local authorities should only be able to request information in relation to varied or cancelled services in order to secure socially necessary services? Please explain your reasons.

We disagree with the premise of this question - namely, that Local Transport Authorities (LTAs) should have to request data from operators. Data should be provided by the operator by default at the start of the pre-notification period rather than being requested by the LTAs within a 7-day period after pre-notification. Our reasons are set out below.

1. The data would be invaluable to the LTA because:

- it would put them in a better position to decide whether and how to address the gap left by the deregistration / service reduction;
- it would reduce the ability of operators to 'game' the system by withdrawing or reducing a profitable service in the expectation of regaining the service when it is put out to tender; and
- provision of summarised data to potential bidders would encourage more and better-informed bids, resulting in:
  - more competitive prices; and
  - a lower risk of successful bidders being unable to sustain the service and therefore a lower risk of the need to re-tender the service, with the associated administration costs and potential disruption to passengers.

It can therefore be assumed that the default position of a competent LTA would be to use any available service data to help them make best use of public funds.

2. It would not be a significant burden on operators to provide the data along with their pre-notification since:

- a competent operator would have already made use of the data to inform their decision to withdraw or vary the service,
- ETM / smartcard data would be available in electronic form and it would be straightforward for the LTA to agree with operators a standard format for the provision of data (many have already have done so for data on supported services), and
- categories of service change exempted from the provision of data will be specified by the regulations, making it clear what data the LTA is entitled to,

3. On the other hand, it would be an administrative burden on the LTA to request, and for the operator to provide, data on an ad hoc basis.
4. The pre-notification period could be used by the LTA to:

- analyse the data;
- challenge the operator's intention, which may result in either the operator not withdrawing the service or amending the variation so that less public sector service support is required; and
- make initial preparations for replacing the withdrawn / reduced commercial service(s) with one or more supported services.

5. If LTAs were forced to request and wait for data, this would eat into the pre-notification period, reducing its usefulness.
6. Therefore, in the interests of administrative efficiency, effective decision-making and hence effective use of public funds, operators intending to withdraw or otherwise reduce a service should provide relevant data to LTAs by default.

Paragraph 9.17 of the consultation document states that: “Whilst the Bill does allow for the regulations to provide that an application from an operator to vary or cancel a service can be refused if the operator does not provide the information if requested, we are not proposing to introduce this. Instead we intend to rely on the powers of the Traffic Commissioner to take the necessary enforcement action against operators.”

We disagree with this proposal.

In the final report of its “Local bus services market investigation” (Dec 2011) the Competition Commission recommended that “the Government give LTAs powers to obtain information about revenue and patronage of deregistered services, and the right to disclose information in such detail as they consider appropriate, having regard to its nature, to potential bidders for subsequent tenders. Failure by an operator to provide this information may result in the request to deregister the service being refused” (Figure 15.4, p15-69, Final Report, emphasis added).

The Competition Commission was quite clear, therefore, that the possibility (but not the inevitability) of an operator’s request to deregister (and, by extension, vary) a service should act as an incentive for them to comply with data provision. We see no reason why this incentive should not be in place. For reasons outlined above, provision of data need not be burdensome to the operator, but failure to provide the data would add an administrative burden to the LTA and, as noted above, reduce the effectiveness of their decision-making.

Q36 has two components relating, firstly, to the range of service changes for which LTAs should be able to acquire data (“varied or cancelled services”) and, secondly, to the purpose to which the data is put (“to secure socially necessary services”). With the qualification set out in our response to Q37, we accept the proposed range of service changes exempted and the purpose to which the data is put but would not want to see further restrictions.

There are a couple of points in the draft regulations relating to the provision of data which would benefit from more precise language:

1. The draft regulations (Appendix L, p98) describe the data that operators should provide to LTAs, including “… The number and types of passengers, the journeys made by those passengers, the types of fares paid by them and the types of tickets used by them, on the whole service or parts of it” (italics added).

   The meaning of “the journeys made by those passengers” is not evident, but since other parts of the paragraph refer to passenger numbers it presumably refers to boarding and, if available, alighting stages. Such data would certainly help the LTA decide how to respond to the service change and the regulations should specifically refer to “boarding stages of passengers and, if available, alighting stages”.

The meaning of “types of fares paid” is also unclear, given that the data description also includes “types of tickets”. Presumably the meaning is simply ‘fares paid’ (i.e. x passengers paying y pence, etc.) and it would be useful for the regulations say this.

2. The draft regulations say nothing about the level of aggregation/disaggregation over time of the data provided by operator (i.e. raw ETM data or some level of aggregation to days, weeks or months). We propose that the regulations specify that the level of disaggregation could be down to the level of raw ETM data, but with the agreement of the LTA, could be aggregated to some mutually acceptable level.

The draft regulations set out exceptions from the circumstances in which a local authority can request information from operators when a service is cancelled or varied. These are listed in paragraph 9.10.

37. Do you agree with the list of exceptions?

We broadly agree with the exemptions set out in paragraph 9.10 of the consultation document and the draft regulations. However, the first exemption should be amended to deal with the possibility that the overall number of stops served could increase but at the same time the number of stops served on part of the route could be reduced (e.g. by re-routing the service).

We propose the exemption be re-written as [variations not caught include those which] “increase the number of bus stops served while not reducing the number of stops served on any section of route”.

38. Should other exemptions be added? If so, what should these be?

Yes: with the agreement of the LTA, data related to short-notice registrations should be exempt.

Although relatively rare, there are circumstances where an operator wishes to make a short notice change which would be in the public interest. An example would be adjustments due to unforeseen changes in the pattern of school journeys at the start of a school term.

39. Do you agree with the disclosure provisions? Please explain your reasons.

Yes, provided that the term ‘monthly’ is clarified to include ‘4-weekly’ (see below) and the provisions are amended in accordance with our response to Q40.

The draft regulations (Appendix L, p99) state that patronage data “… may only be disclosed … to other operators [potential bidders] if it has been aggregated on a monthly basis”. “Monthly” could mean “calendar month”, or more loosely, a four-week period. The latter would be more useful to potential bidders and easier to produce from raw ETM data; the regulations should specify that ‘monthly basis’ could mean ‘a four-weekly basis’.

40. Do you foresee any other circumstances in which authorities should be able to disclose this information? Please explain your reasons.

Yes. Given that the operator has chosen to withdraw a service then the Local Transport Authority should be free to use this data to either seek inform its decision to contract out the service and/or to make this information available to other operators (be they commercial or community transport providers) who may be interested in providing the service without the

need for the Local Transport Authority to contract it out at public expense. The ability to place the data in the public domain could also act as a deterrent to 'gaming of the system'.

The guidance should also make clear what the penalties are for providing false information.

Pre-notification period and time periods for issuing and responding to requests

41. Do you agree that a pre-notification period should be introduced? Please explain your reasons.

Yes. We agree with the pre-notification period for the same reasons put forward by the Competition Commission:

1. It would constraint operators' ability "to compete in ways which are likely to create overcapacity and to compete in a way that is aimed at promoting a rival's exit" (Competition Commission, "Local bus services market investigation" (Dec 2011), paragraph 15.111).
2. As set out in the first part of our response to Q36 and by the Competition Commission (ibid, paragraphs 15.302 to 15.333), a pre-notification period would facilitate the provision of data for deregistered / reduced services that would result in more effective use of public funds.

42. If you agree that a pre-notification period should be introduced do you think it should be for 14 or 28 days? Please explain your reasons.

We favour a 28 day pre-notification period as long as this does not lead to any reduction in the 56 day registration period.

There is already much to do in the 56-day registration period: consult with the public and Members, issue tender documentation, receive bids, award the tender, amend timetable leaflets and bus stop timetables and ensure bus station slots are allocated efficiently and undertake the appropriate approvals process (necessary to ensure effective democracy and effective use of public funds). The workload is made even greater when an LTA agrees a limited number of service change dates with operators. Such agreements improve network stability and are in the interests of passengers.

A 28 day pre-notification period would be helpful in providing time to:

- analyse the operator data;
- potentially challenging the operator's intention, which may result in either the operator not withdrawing the service or amending the variation so that less public sector service support is required; and
- make initial preparations for replacing the withdrawn / reduced commercial service(s) with one or more supported services.

This is a lot to accomplish in 20 working days and a 28-day pre-notification period will only be adequate if the LTA receives service data at the start of the period.

43. Is 7 days a reasonable amount of time for the local authority to decide whether to request the information? Please explain your reasons.

No.

We believe that the obligation to provide data following an application to vary or deregister should be mandatory. We disagree with the provision contained in the DfT's draft regulations at 3(A) (4) on page 98 which states that authorities must request information from operators within 7 days of being notified of an operator's intention to make an application to vary or cancel a service.

We believe that it is both critical to authorities when making judgements in respect of potential subsidy and also to other operators who may be consider tendering for any supported service or analysing whether to register their own commercial service. We do not consider this short time frame to be warranted or appropriate.

For reasons set out in our response to Q36, we do not think it is reasonable to expect LTAs to have to request data at all. Data should be provided by default. We are encouraged by the fact that this issue was discussed at Committee Stage in the House of Commons on Thursday 16 March 2017. We hope therefore that this issue is given further consideration.

44. Is 7 days a reasonable amount of time for the operator to supply the relevant information to the local authority? Please explain your reasons.

As explained in our response to Q36, there is no good reason why operators should not be able to provide data by default at the start of the pre-notification period.

Part B: Draft Guidance

General guidance for improving bus services (Annex M)

45. Do you have any comments on the general guidance for improving bus services.

No.

Franchising: Assessment of a proposed scheme- ("Business case guidance") (Annex N)

46. Do you have any comments on the business case guidance?

Some of our members will be making more detailed comments in the key issues and areas of concern that we set out below – including on suggested changes to wording. We do not go into that level of detail in this response but these are our key concerns on the guidance.

We agree that the overall approach of having the assessment follow the HM Treasury Green Book five case model is the right one, and that a franchising proposal should be compared against other options for reforming the bus market and achieving the transport authority's objectives for the transport system.

We recognise that the guidance must set out an appropriate degree of detail to ensure that the assessment is robust and facilitates a well-informed consultation process. This should be balanced with a recognition that if the guidance is over-prescriptive it could prevent a transport authority developing a case for franchising.

However we have a number of areas of concern which often relate to a lack of sufficient precision in language as well as a general lack of cohesion in the drafting. In other areas

there appears to be 'creep' in terms of the burden of proof on a franchising proposal which go beyond the spirit and intent of the legislation.

On a number of occasions the guidance implies that LTAs should have a level of certainty about the future impacts of a franchise proposal than is possible – for example in relation to small and medium size operators (where the implications may vary depending on whether they choose to bid or not to bid for services, and on whether they are or are not successful in doing so).

The guidance risks elevating the requirement for appraisal and assessment of alternative options to a franchise above and beyond the requirements of the Treasury Green Book template and also risks implying that there is a need for a stepped process from partnership to franchising which goes against wider Government assurances that there is no requirement for the partnership approach to have been tried and seen to have failed before embarking on a franchising approach.

The guidance does not give sufficient attention to the needs of those who are not currently passengers but who may become passengers as a result of the changes that flow from a franchise.

Franchising: Guidance in relation to the role of the auditor (Annex O)

47. Do you have any comments on the role of the auditor?

Yes.

We welcome the inclusion of paragraph 5 confirming that the auditor is not to pass judgement and confining the auditor's role to a purely objective assessment. We trust that the Government is satisfied that the wording of section 123D of the Bill is appropriate and that this will be supported by guidance that provides for a sensible assessment to be followed by the auditor.

However, we consider it be unclear what happens if the auditor finds that information or an assessment is not sufficiently robust.

Paragraph 4 of Annex O does not refer sufficiently clearly to the provisions in the Bill at section 123D (2). It should also be clear that the auditor should not be limited by guidance in preparing their report, and prevented from touching on issues of relevance to the provisions in the Bill. The use of 'recognised sources' in the first bullet, and in the third bullet on assumptions, is ambiguous and these points should reflect a standard upon which it is possible to make a clear judgement. The final bullet also changes the requirement in the Bill for the authority to have 'due regard' to the Guidance, changing it to 'follow' the guidance. The former is the right standard to be referred to and as this bullet does not add anything to what is already in the Bill it should be omitted. Paragraph 4 should therefore read

The authority should develop a terms of reference for the auditor in preparing a report. In setting out the activities that the auditor should be conducting on behalf of the authority with reference to Section 123D 2a and 2b, it is recommended that the terms of reference should state that the report should include, but not be limited to considering:

- Verifying that the it is reasonable for the authority to rely upon the information and that it has not been selective in the choice of material used in order to support – or otherwise – a particular option;
- Verifying whether the information relied upon is as relevant and up to date that the authority could realistically have used (taking into account the quality and timeliness of any information received from bus operators);
- Verify that the assumptions recorded as part of the assessment are recorded appropriately and that it is transparent what sources have been used;
- Verifying the mathematical and modelling accuracy of the analytical methods used to calculate the impacts of the options.

In addition, we consider it important that the guidance makes it clear that the auditor report does not in itself prevent an authority from proceeding with its proposed franchising scheme. We suggest the inclusion of a paragraph 6 stating something along the following lines:

"Where the auditor provides a qualified opinion in respect of its consideration of the authority's process, information or analysis in respect of certain matters, it is for the franchising authority to decide what, if anything, needs to be done to remedy those matters. Where the franchising authority decides to commission a further assessment, this should be audited under section 123D in the same way as the original assessment. Where the franchising authority considers that the matters can be dealt with by supplementary information, it should also consider whether it is appropriate for the auditor to prepare a further report on that information. Whichever course of action the franchising authority takes, if it then decides to proceed with the franchising scheme, it must ensure that the information reviewed by the auditor, as well as the auditor's reports, are all published as part of the consultation exercise required by section 123E (2)."

Enhanced partnerships: Delivering an enhanced partnership (Annex P)

Q48. Do you have any comments on the guidance for delivering an enhanced partnership?

Some of our members will be making more detailed comments in the key issues and areas of concern that we set out below – including on suggested changes to wording. We do not go into that level of detail in this response but these are our key concerns on the guidance.

As it stands, the draft guidance neither gives a clear idea of in what circumstances an Enhanced Partnership could bring benefits nor is its explanation of the process itself as clear as it could be.

For example the flowchart has an important role in giving readers an overview of the complicated process of forming, varying and revoking EPPs and EPSs. It could also, if the structure of the text corresponded to it more clearly, also assist the reader in navigating their way through the guidance.

The flowchart could be improved by identifying all key decision points and indicating process iterations. For instance, as currently drafted, the flowchart does not acknowledge the possibility that operator objections could require the EP package to be renegotiated; nor does it show the iterative loop that would arise in such a situation.

Also, paragraph nine says that "if a formal process is required, it does not assume that the authority will always invoke the discussions". In apparent contrast, the flowchart on the previous page says that the "(Lead) LTA initiates informal discussions on the scope to introduce an EP". The distinction between 'invoke' and 'initiate' is not obvious and confusion could be avoided if the flow chart used a different word (e.g. 'convenes').

Enhanced partnerships: Competition considerations (Annex Q)

Q49. Do you have any comments on the guidance concerning competition in an enhanced partnership?

We have the following comments:

Para 1 – "… 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". This is an unhelpful and unnecessary statement. The most likely reason for a proposal being unpopular with an operator is that it will disadvantage them in some way. Proposals can disadvantage all operators 'fairly' or they can in some way discriminate against certain operators. Ultimately whether or not a proposal is "unpopular with individual operators" is likely to be a matter of fairness. The statement is unhelpful because it diverts attention away from the important but difficult question of what, in practice, constitutes fairness.

Para 2 – The example of unfairness given in this paragraph relates to engagement with operators during the process of establishing an EP. Returning to the previous point, it would be helpful to provide an example of an unfair proposal.

Para 13 – This is a long and complicated paragraph and its point only becomes apparent at the end: that the CMA would take action against the EPS or EPP, not against individual operators, and the EPS/EPP therefore gives operators 'cover'.

It would be better have two paragraphs: the first, ending with "group turnover", would establish why operators are right to be concerned about competition law; the second, would start by making the point that an EPS/EPP gives operators 'cover' and then explain why.