

The Local Transport Act 2008

Quality partnership schemes:

Statutory guidance to English local
transport authorities and metropolitan
district councils

March 2009

CONTENTS

Purpose of guidance	3
Overview	3
Introduction to QPSs	5
Benefits of a QPS	7
Contents of a QPS	8
Registration restrictions	15
Admissible objections	19
Establishing a QPS	26
Making and introducing a QPS	36
Managing and enforcing a QPS	41
ANNEX A: Facilities	51
ANNEX B: Standard of services	55
ANNEX C: Competition tests	58

Purpose of guidance

1. This guidance relates to quality partnership schemes made under Part 2 of the Transport Act 2000 (“the 2000 Act”), as amended by the Local Transport Act 2008 (“the 2008 Act”). It is issued under section 123 of that Act by the Secretary of State to local transport authorities and metropolitan district councils in England, who must have regard to it when exercising functions related to quality partnership schemes. The guidance takes effect from 6 April 2009, the date on which the relevant amendments contained in the 2008 Act come into effect, and it supersedes previous guidance published by the Department for Transport about quality partnership schemes.
2. It is envisaged that the guidance will also be of interest to bus operators, transport user groups and other interested parties, as well as informing the traffic commissioners’ approach to the exercise of their functions relating to quality partnership schemes. References in this guidance to provisions in the 2000 Act are references to that Act as amended by the 2008 Act.

Overview

3. The Quality Partnership Scheme model was introduced by the 2000 Act. Under such a scheme a local transport authority (“LTA”) (or two or more LTAs jointly) agrees to invest in improved facilities at specific locations along bus routes (e.g. bus stops or bus lanes) and operators who wish to use those facilities undertake to provide services of a particular standard (e.g. new buses, or driver training standards).
4. Only those operators prepared to provide services to the standards specified in the scheme are permitted to use the facilities. Whilst other operators are not generally prevented from providing local services in the area covered by the scheme, they cannot use the facilities provided by the LTA under it. The 2000 Act, associated regulations and guidance set out the way this process would operate. For the purpose of clarity within this volume, a Quality Partnership Scheme is referred to as a “QPS” or “scheme”.
5. The QPS model is a flexible one: schemes can be route- or corridor-specific, or could cover larger networks of routes. Where this guidance discusses particular principles in relation to route- or corridor-specific schemes, those principles should be capable of being applied to larger network-based schemes.

6. The 2008 Act expands the terms of the QPS model to allow a LTA to specify requirements as to frequencies, timings or maximum fares as part of the standard of service to be provided under a scheme, in addition to quality standards. But it also provides important safeguards to ensure that unrealistic conditions are not imposed on operators, and that their legitimate right to a fair commercial rate of return on their investment is not undermined. The process by which an operator can object to particular standards included in a scheme relating to frequencies, timings or maximum fares, is an important feature of this. But at the same time it places a responsibility on them to justify the grounds for their objection, thus minimising the scope for vexatious or frivolous objections.

7. It should be stressed at the outset, however, that the QPS model is intended to be used as a true partnership between consenting parties. Indeed, the Department envisages that one of the strongest arguments for a Quality Partnership Scheme in a particular area is to support and underpin voluntary agreements between authorities and operators, with agreed objectives and outputs on both sides. QPSs and voluntary partnership agreements are therefore best thought of as complementary measures, rather than merely as substitutes. This might be in the context of pre-existing partnerships with operators, major schemes supported through the Government's Transport Innovation Fund, or through the Tendered Network Zones model developed by the Association of Transport Co-ordinating Officers (ATCO).

8. Separate guidance¹ issued by the Department jointly with the Office of Fair Trading ("OFT") explains how the changes to competition law relating to voluntary partnership agreements, and certain agreements between bus operators, make this model an attractive one, as well as providing further details about the competition test that applies to the making of a QPS.

¹ To be published at www.offt.gov.uk.

Introduction to QPSs

9. A QPS is a *statutory scheme* with its process, form and content prescribed by the 2000 Act and associated regulations². Unlike a voluntary partnership agreement, which is entered into jointly by local authorities and bus operators, it is a “scheme” which is “made” by a LTA. It should not be described as an agreement.

10. There is a specified statutory procedure for publishing proposals to make a QPS and for consultation on those proposals before the scheme is actually made. Once the scheme is made, the LTA is under a statutory duty to provide the facilities identified in the scheme from the dates specified, and to maintain those facilities for as long as the scheme is in operation.

11. Once the scheme has been made by the LTA, any operator providing local services in the relevant area may use the facilities provided under the scheme, so long as they have given a written undertaking to the traffic commissioner that they will provide services to the standards specified in the scheme, including any relating to service timings, frequencies and maximum fares. The traffic commissioner can take enforcement action against any operator who uses the facilities, but has not given the necessary undertaking, or against an operator who has given such an undertaking but who fails to provide services to the specified standards.

12. Changes made by the 2008 Act mean that a QPS may also specify restrictions on the registration of new services, or the variation or withdrawal of existing ones, in the area of the scheme (“registration restrictions”). Where these are included, the scheme must also include registration criteria, against which the traffic commissioner must decide whether or not to accept applications to register new services, or to change existing ones. The intention of this is to protect operators and LTAs from:

- the introduction of new services which might undermine services already provided under the QPS; and

² At the time of publication, the following Regulations had been made specifically in relation to QPSs: The Quality Partnership Schemes (Existing Facilities) Regulations 2001 (SI 2001/3317), The Quality Partnership Schemes (England) Regulations 2009 (SI 2009/445) and The Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009 (SI 2009/443).

- operators who are not willing to operate to the standards in the QPS running alongside, but not using, the facilities and undermining the position of those that do.

13. It will be important to ensure that this process of registration restrictions is not used to constrain the commercial freedom of participating operators unnecessarily. Detailed guidance is provided in paragraphs 48 to 60 below.

14. Before making a QPS, the LTA must be satisfied that it will contribute to the implementation of their local transport policies³. In addition, when making a QPS a LTA must ensure that the competition test in Part 1 of Schedule 10 to the 2000 Act is met (see paragraphs 100 to 105).

15. The LTA must be satisfied that *both* the facilities *and* the standard of services specified in a QPS will themselves:

- bring benefits to persons using local services in the whole or any part of their area, or combined area, by improving the quality of those services, or
- reduce or limit traffic congestion, noise or air pollution.

16. One key benefit of the QPS model is its potential to work alongside, and support, voluntary arrangements with operators. Indeed, where a QPS includes requirements as to frequencies or timings, it may be necessary (at least in a multi-operator environment) for two or more operators to enter into a qualifying agreement⁴, setting out how they will in practice, between them, meet those requirements. Agreements of this sort are likely to be subject to competition law and, provided such an agreement is endorsed by the LTA⁵, will normally be subject to the competition test in Part 2 of Schedule 10 to the 2000 Act. Further guidance on this point is provided later in this volume and in separate competition guidance (see paragraph 8 above).

³ Local transport policies, for these purposes, are policies which LTAs must develop for the promotion and encouragement of integrated, efficient and economic transport to, from and within their area (see section 108(1)(a) of the 2000 Act).

⁴ The term 'qualifying agreement' is defined in paragraph 17(4) of Schedule 10 to the 2000 Act.

⁵ See paragraph 18 of Schedule 10 to the 2000 Act.

Benefits of a QPS

Why operators might find a QPS beneficial

17. There are two important reasons why operators might favour a QPS. One is to ensure, as far as is possible, the delivery of effective bus priority and other measures required to enable bus services to be operated punctually, reliably and efficiently; and that their provision, maintenance and enforcement survives any subsequent change in local authority policies or priorities.

18. The second is to offer some degree of protection of an operator's investment, where guaranteed provision of bus infrastructure by a LTA is matched by a high level of investment in service quality (including perhaps introduction of new high-specification vehicles, or enhanced service frequencies). Under a voluntary agreement alone, an operator may undertake considerable investment in improving the quality of service provision. This may be put at risk or undermined by another operator running services to a lower standard immediately ahead of the higher-quality vehicles provided as part of the voluntary agreement. Under a QPS, operators who are not prepared to provide services to the appropriate standards may not use the facilities, and enforcement action can be taken against operators who breach these rules. A QPS may also include "registration restrictions", specifying circumstances in which it may be inappropriate for the traffic commissioner to allow new services to be registered in the area to which the QPS relates. These features of the QPS model can provide comfort to operators who are prepared to invest in providing better quality services.

Why LTAs might find a QPS beneficial

19. There are three reasons why a LTA may prefer a QPS to a voluntary agreement, which generally lacks powers of enforcement. One is that under a QPS, all operators using the facilities must meet the relevant standard of service specified in the scheme. In contrast, voluntary agreements may be diluted, or fail to deliver, because an existing operator does not wish to provide a higher standard of service.

20. The second is that, even when a voluntary agreement is in place, there is no power to stop another operator providing services to a lower standard on the route or in the area. The enforcement powers which come with a QPS, and the potential to include registration restrictions, are intended to help prevent such an incursion.

21. The third is that a LTA may wish to lever a higher quality of service from operators than it can obtain through a voluntary agreement. The local authority will need to be careful in adopting the latter strategy under a QPS. If it sets the standard too high, it may risk operators responding in a way that it may not intend, for instance by reducing commercial services or increasing fares. A QPS is best developed in partnership with all potentially affected operators to ensure that the standards are set at an appropriate and achievable level that will deliver the proposed benefits – including value for money (for passengers and in terms of policy and commercial objectives), growth in patronage, or improvements in the efficiency and effectiveness of operations.

Contents of a QPS

What “facilities” and “standards of service” can be included in a QPS? Is there anything that cannot be included?

22. A LTA may include in a QPS any facilities, either direct or ancillary, which it considers will bring benefits to passengers by improving the quality of services, or reducing or limiting traffic congestion, noise or air pollution. The provision of some facilities may require the making of a Traffic Regulation Order (TRO)⁶. In some areas, the provision of new facilities may involve a significant investment, for example to provide a new bus station, or an extensive network of bus lanes. By contrast, in the context of the Tendered Network Zones model favoured by ATCO, the “facilities” offered might consist mainly of relatively minor infrastructure, such as new bus stop poles, shelters, raised kerbs and bus stop clearways (which could be provided as part of a long-term plan for developing the network, alongside proposals for registration restrictions and criteria – so long as they were proportionate to the infrastructure improvements). Annex A provides a non-exhaustive list of facilities that might be provided under a QPS.

23. As part of a QPS it may be necessary for the LTA to include facilities that are outside its own powers to deliver. It will be particularly important to consider the role of the highway, traffic, planning, environmental health, police and other appropriate authorities if the necessary powers do not rest with the LTA, either partly or fully. Though it is not necessary to seek the formal agreement of these bodies before making a scheme (although the

⁶ If a TRO needs to be made on a road for which a metropolitan district council or the Secretary of State is the traffic authority, then the scheme must be made jointly by the LTA and that council or, as the case may be, the Secretary of State. See section 114(7) and (8) of the 2000 Act.

chief office of police for the area is a statutory consultee), the Department expects lead local authorities to engage with them as fully and positively as possible in the development of schemes. Interaction with the local planning authority (where different from the LTA) would also be important where there is scope for facilities in a QPS to be funded from section 106 (developer funding) agreements.

24. Information about bus services (routes, timetabling and fares etc) provided by a LTA under section 139 or section 140 of the 2000 Act cannot be provided as a facility under a scheme. That is because the LTA is already under a statutory obligation to decide what information should be provided, and then to ensure that it is, so it would not be fair to expect operators to improve standards of service in return for it. But anything over and above this could be included in a QPS, subject to meeting the definition of "facility" contained in section 114(5) of the 2000 Act⁷.

25. A QPS must also specify the "standard of services" required from operators under the scheme. Annex B provides a non-exhaustive list of examples of "standards of service" that might be included in a QPS. From 6th April 2009, schemes may specify requirements as to frequencies and timings of services, and to the setting of maximum fares⁸, as part of the "standard of service". It is for the LTA to determine whether to include such requirements in a scheme, but they may be included only if there are no "admissible objections" from "relevant operators". This issue is discussed further in paragraphs 61 to 81 below.

Does the same "standard of service" have to apply equally to all services covered by a scheme, or to all services using a particular facility?

26. No. A scheme can specify different requirements for different services, or for services of different descriptions. A particular frequency, timing or maximum fare that is appropriate on one route is not necessarily appropriate on another, and so different requirements could be specified for different routes covered by a scheme. Moreover, it might be appropriate for a scheme to apply different requirements on a particular route at different times of day – e.g. a higher frequency at peak times, or a higher maximum fare for night-bus services.

⁷ Defined as "facilities provided at specified locations along routes served, or proposed to be served, by local services within the area to which the scheme relates, or facilities which are ancillary to such facilities", but excluding facilities provided under sections 139 or 140.

⁸ LTAs may consider that it is appropriate for maximum fare requirements to be specified in the form of a formula, including a relevant cost index and other relevant factors.

27. Some facilities provided under a QPS might be available on just a single bus route, but many will be used by a diverse range of different services. For example, a town or city centre bus station might be used by higher-frequency commuter services in rush-hour and lower-frequency services to outlying villages on market day. A QPS can quite legitimately specify different standards of service for different routes, even if those different routes are all using the same facility.

28. A scheme might also specify different maximum fares for different types of ticket. For example, it might specify a particular maximum fare for an all-day travelcard covering the whole of the area of the scheme. However, it is not the Government's intention that a QPS should be used to broaden local authority travel concession schemes, for which a separate statutory framework exists.

29. The key consideration in deciding whether to include a particular standard of service in a scheme should be whether it would contribute to the scheme's objectives without unnecessarily or disproportionately constraining competition or operator innovation. This is why the competition test (see paragraphs 100 to 105) requires that any significantly adverse effect on competition should be proportionate to the benefits of the scheme.

Do all facilities have to be provided, and standards of service met, on the same date?

30. No. A QPS can specify that different facilities and standards of service will be provided from different dates, enabling improvements to be phased in according to a pre-determined timetable. But the way in which facilities, on the one hand, and standards, on the other, are phased in should be proportionate. For instance, a local authority should not propose to phase in facilities over a five year period, but require full compliance with the standards of service from Day 1. This is unlikely to be proportionate.

31. Similarly, if – during the lifetime of a QPS – a local authority was obliged to postpone, or cancel, the provision of facilities which had the result of undermining the basis on which operators were providing improved standards the Department would expect the LTA to open discussions with participating operators with a view to revising those standards. The 2000 Act allows for the postponement of facilities for up to a year; if a LTA wished to cancel provision of a particular facility completely, then it would need to vary the scheme (see paragraphs 131 to

133 below).

Under what circumstances can existing facilities be included in a QPS?

32. A QPS may, with restrictions, specify facilities which are already in place. This enables facilities originally provided under voluntary agreements, or developed by local authorities under their general investment in transport (for instance parking and waiting controls or bus priority measures), to form part of a QPS.

33. Safeguards are necessary because existing facilities may be used regularly by operators that do not wish to join the QPS, or might find it difficult to meet the standards of service set by the scheme. The rules are set out in regulations: the Quality Partnership Schemes (Existing Facilities) Regulations 2001 (SI 2001/3317). Essentially:

- facilities may not be incorporated in a QPS if they were provided more than 10 years prior to the date on which notice is first given of the proposed scheme;
- facilities provided more than 5 years but less than 10 years before that date may be incorporated, provided certain conditions are met;
- facilities provided within 5 years of that date can be incorporated without such conditions.

34. Where a proposed scheme would include any existing facilities, the notice proposing the scheme must give the date on which the facilities were first provided and give bus operators that relied on the facilities at least 42 days in which to register an objection.

35. The conditions that need to be met for 5-10 year old facilities are that, within that objection period, no operator has objected to the inclusion of such a facility, or any objection made has subsequently been withdrawn. When the QPS is made, it must state that no objection to the inclusion of the facility has been received (other than objections that have subsequently been withdrawn).

36. This procedure gives an effective veto on the inclusion of a 5-10 year old facility if any operator can show that it was relied upon. Conversely, whilst an operator does have the right through the statutory consultation process to object to the inclusion of a facility that was less than 5 years old

at the time the notice was published, it does not have the right to veto its inclusion.

How is the area of the scheme defined?

37. There are references in the legislation to “the area to which a scheme relates”. Depending on the circumstances, this area could be small (in the case of a scheme covering a single corridor or route) or large (where a scheme covers a wider network, with improved facilities provided at various locations around that network). Each scheme will need to define clearly the area to which it relates. This area should be appropriate given the nature and location of the facilities being provided.

*Can an existing Traffic Regulation Order (TRO) be included in a QPS?
What if a trunk road is involved?*

38. A TRO may often be necessary to give effect to the provision of a facility and, where that is the case and the LTA is not the appropriate traffic authority, the LTA must have regard to the provisions in section 114(7) and (8) of the 2000 Act (see footnote 6 above). TROs themselves are not facilities (see definition in section 114(5)), but a facility such as a bus lane will depend on a TRO to prohibit the use of the lane by other traffic. Enforcing the TROs, and providing the traffic signs necessary to enforce them, can therefore be as important to the success of a QPS as providing the facilities themselves.

39. It should be noted that paragraph 27(3) of Schedule 9 to the Road Traffic Regulation Act 1984 (inserted by Schedule 11 to the 2000 Act) prevents a traffic authority from varying or revoking a TRO that is required for a QPS without the agreement of the other authority or authorities concerned. Therefore any TRO required under the scheme must be maintained for the duration of the scheme.

40. If a QPS involves the making of a TRO on a trunk road (or any other road for which the traffic authority is the Secretary of State) it is necessary for the Scheme to be made jointly by the LTA(s) and the Secretary of State, through the appropriate Highways Agency regional office. A local authority TRO may be made on a trunk road in conjunction with a QPS, provided the Secretary of State consents – see section 1(3A) of the Road Traffic Regulation Act 1984.⁹

⁹ Section 1(3A) was inserted by Schedule 11 to the 2000 Act.

Can provision be made for issues not included in a QPS?

41. A voluntary agreement or agreements can be made to support a QPS to cover issues which are not included within the QPS itself. Such an agreement might cover broader and wider-ranging issues of partnership such as the promotion of bus use and measures to encourage modal shift. It may be appropriate for a voluntary agreement to be contained in a legally binding document, signed by the operator, the LTA and, where different, the traffic authority, together with any relevant third party – e.g. the Police or Highways Agency.

42. The potential to include timings, frequencies and maximum fares within a QPS may also give rise to the need for agreements between operators - described as 'qualifying agreements' in the legislation¹⁰. For example, the standard of service specified by the authority in a scheme might be that four services should be provided every hour on a particular route, at evenly-spaced intervals. Where more than one operator is to provide services on that route, it may be beneficial for those operators to make a qualifying agreement stipulating which operators will provide particular services at specified times.

43. The Department recognises that this may, in practice, be very difficult for operators – for instance, their flexibility to integrate service patterns within a QPS may be severely constrained by operational or timetabling factors affecting connecting services starting outside the QPS. Similarly there are practical constraints affecting how much one operator might be prepared to have his timetabling dependent on other operators.

44. The Department expects issues of this sort to be subject to pre-QPS negotiation with local authorities (who – with an eye to the admissible objections process – would want to make sure their proposals are practical and workable). The Department also expects operators to take a proportionate approach as to what might be practical. Where an authority is proposing a QPS as part of a package of measures expected to deliver a substantial increase in demand for bus services, for example a local road charging scheme, a more fundamental reorganisation of an operator's services, inside and outside the QPS scheme, might be more viable, and change the nature of the commercial risk the operator would be prepared to take.

45. Where operators enter into voluntary agreements they need to be

¹⁰ See paragraph 17(4)(a) of Schedule 10 to the 2000 Act.

aware of the potential competition law implications. Where such a “qualifying agreement” has as its object or effect the prevention, restriction or distortion of competition, it will be necessary for the appropriate competition test to be satisfied. Schedule 10 to the 2000 Act provides that, where such an agreement is certified by the LTA as being in the public interest, and only imposing restrictions which are necessary for the attainment of the bus improvement objectives¹¹, then that agreement will be subject to the new competition test in Part 2 of Schedule 10. Any voluntary agreement which does not have such an endorsement must satisfy the test in section 9 of the Competition Act 1998. See paragraphs 106 to 109 for further information as to how this might work in practice.

46. Authorities should also note competition law requirements may also apply to a series of bilateral voluntary agreements between an LTA and an operator. This is because it is possible for a series of related agreements, taken together, to have a significant impact on competition – even if each individual agreement has no such impact, and may fall outside the application of competition law by virtue of the fact that it is not an agreement between undertakings. In such circumstances, the competition test needs to be applied to the series of agreements taken together. Annex C contains some flow charts, which provide an overview of the competition tests that apply in relation to both QPSs and certain agreements involving bus operators. Further information on these competition issues is contained in the separate competition guidance mentioned in paragraph 8 above.

Can services be excluded from a QPS?

47. A QPS need not apply to all the local services in a specified area or corridor, but if any are to be excluded from it (i.e. allowed to use the facilities without meeting the standards) they must be specified in the scheme, by reference either to particular services or to particular classes of service. Services may be excluded either absolutely or subject to conditions. Possible examples would be:

- excursion or tour services which are technically "local services" but do not serve a local transport function;

¹¹ The term “bus improvement objectives” is defined in paragraph 17(9) of Schedule 10 to the 2000 Act as “securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services; securing other improvements in local services of benefit to users of local services, and reducing or limiting traffic congestion, noise or air pollution.

- interurban or other long distance scheduled services that are not generally used for local journeys within the scheme area;
- other services that make limited use of corridors or stops within the scheme area, perhaps including infrequent services from outlying rural areas if those services could not reasonably be expected to meet the standard specified in the scheme;
- community bus services; or
- local services not normally available or widely used by the general public (e.g. school buses).

Registration restrictions

Do operators have any protection for the services they run in a QPS?

48. Changes made by the 2008 Act would allow a LTA to include “registration restrictions” in a QPS. Where such restrictions are in place the traffic commissioner would, in certain circumstances, have the power to refuse an application either to register a new service, or to vary or withdraw an existing one. The inclusion of registration restrictions may be appropriate where participants in a proposed QPS may be concerned about the risk of the scheme being destabilised by a new operator competing in the market without meeting the "standard of services" specified in the scheme (by not operating services to the required standard that operator may, for example, be able to offer lower fares), or running services that undermine a marginally commercial part of the scheme.

49. The 2000 Act, and the Public Service Vehicles (Registration Restrictions) Regulations 2009 (S.I 2009/443) prescribe the procedure to be followed. Briefly, where the traffic commissioner receives an application to which a registration restriction applies, that commissioner must notify the local authority and relevant bus operators within 14 days. Those parties then have the opportunity to make relevant representations, if they consider that accepting the application would be detrimental to the provision of services under the scheme. Relevant representations must be made within the time specified in the notification (which must be not less than 21 days).

How does the traffic commissioner decide what registrations or service changes to allow?

50. The primary legislation¹² makes clear that the question the traffic commissioner must determine is whether or not accepting the application would be detrimental to the provision of services under the scheme. The commissioner should not refuse an application simply because somebody has made a relevant representation¹³; the traffic commissioner would need to be satisfied that there would be likely to be an appreciable (i.e. non-trivial) detriment.

51. The registration criteria spelt out in the scheme must be applied by the commissioner as part of the process of determining what is likely to be detrimental. But the commissioner must also take into account all relevant representations and any other relevant information when determining whether or not a particular application should be accepted. In making a judgement, the Commissioner is likely to look to gauge the extent to which new services would provide passenger benefits and generate increased patronage, rather than simply seeking to win passengers from existing services.

52. In certain circumstances, the commissioner might decide to hold an inquiry in order to examine in more detail the position of the relevant parties. This is a judgement for the commissioner based on the particular circumstances of the case.

When is it appropriate for a LTA to include registration restrictions in a QPS?

53. Where a LTA is considering the inclusion of registration restrictions in a QPS, it would need to strike a balance between empowering the traffic commissioner to prevent undesirable or destabilising competition, while not imposing an undue barrier to the provision of additional services, or changes to existing ones, where that would be in the public interest.

54. Indeed, the sole reason for making statutory provision for registration restrictions was to prevent such destabilising competition – and local authorities should ensure against unintentionally constraining the commercial freedom of bus operators in ways that are not necessary to

¹² See section 6A of the Transport Act 1985, inserted by section 48(3) of the 2008 Act.

¹³ Defined in section 6A(12) of the Transport Act 1985 as “representations that the effect of accepting the application would be detrimental to the provision of services under the scheme, having regard to the registration criteria.

secure the objectives of the QPS. For example, it might be appropriate for registration restrictions to be included in a scheme so that, where an operator applies to register a new service or to vary the timings of an existing one, the traffic commissioner must take into account whether accepting the registration would cause excessive congestion at a new bus terminus. But it is unlikely to be appropriate for registration restrictions to impose restrictions on a bus operator who wishes to reduce or withdraw a service where material changes in the market mean there is no longer sufficient demand for it.

55. It is inevitable that demand for services will change over the lifetime of a scheme, and any scheme requirements about frequencies, timings or maximum fares are likely to need to respond to those changes. Provisions for the review of requirements about frequencies, timings and maximum fares are discussed later, but it is important to ensure that registration restrictions in a scheme do not prevent changes to service registrations that are needed to implement the outcome of such a review.

56. It is important to note that registration restrictions can 'bite' only in circumstances where accepting an application would be detrimental to the provision of services generally under the scheme. It is possible for registration restrictions to apply to services that are not using the facilities provided under the scheme – for example, it is possible that services running on a nearby parallel route could undermine the viability of QPS services. However, where a service was not operating on a route where facilities were to be provided under the scheme, and was not competing with services that were, it is unlikely that the registration (or variation or withdrawal) of that service would be detrimental to the scheme as a whole.

57. Though there is no formal procedure for interested parties to object to the inclusion of registration restrictions in the scheme as made, over and above the statutory consultation, LTAs must set out details of the proposals in their consultation on the scheme, and must therefore have appropriate regard to operators' comments. As with any consultation, an authority which unreasonably failed to have regard to the views expressed by any consultee could be vulnerable to legal challenge.

58. An authority would also need to be satisfied that any adverse effects on competition in the market for local services - including the effects of any registration restrictions - are proportionate to the benefits. This is necessary to satisfy the competition test in Part 1 of Schedule 10 to the 2000 Act, which must be met where a local authority makes or varies a QPS. This is an important safeguard, and it would be good practice for a

LTA when consulting on a proposed scheme to set out a summary assessment of how it considers the scheme meets the competition test. Such an assessment could usefully consider the extent to which there is existing on-road competition between operators on the routes or networks covered by the scheme, and/or the realistic potential for such competition to occur, as well as considering the extent to which the QPS would constrain the commercial freedom of existing operators.

59. Restrictions in a scheme that would limit operators' freedom, in the long term, to reduce or withdraw services (e.g. in response to a material change in the level of demand) could impose high costs on operators, and so there would need to be evidence of substantial offsetting benefits to passengers to justify such a restriction. Similarly, the Department expects such restrictions to be reviewed and, if necessary, revised at regular intervals throughout the life of the QPS.

60. Where a QPS includes requirements about frequencies or timings, the normal process for handling a situation of a structural fall in demand should be for operators, in the first instance, to discuss the matter with the LTA. As with all aspects of QPSs, such issues are likely to be resolved most effectively through discussion between the parties involved, and it should be in both the LTA's and the operators' interests to work together to find a mutually acceptable way forward. In the light of those discussions, the authority could then formally propose any necessary changes in accordance with the provisions of the Regulations. Where such a review led to a reduction in the frequency specified in the scheme, registration restrictions should not prevent operators from varying or withdrawing service registrations in order to reduce frequency to the new minimum requirement. Even where registration restrictions are in place, if no relevant representations are made in response to the notice issued by the traffic commissioner, then the application must be accepted. In such circumstances the traffic commissioner has no discretion to refuse the application.

Admissible objections

When do bus operators have to agree to the inclusion of particular standards of service in a QPS, and how should that agreement be sought?

61. A QPS may include requirements as to the frequency or timing of services, or maximum fares, only if there are no “admissible objections” from “relevant operators”. These two terms are defined in the Quality Partnership Schemes (England) Regulations 2009 (SI 2009/445) (“the QPS regulations”), which also make other related provisions. The “admissible objections” provisions do not apply to other standards of service so, if a scheme does not include requirements as to frequencies, timing of services, or maximum fares, these regulations would not apply. Where a scheme includes a variety of different requirements, the provisions about “admissible objections” apply only in relation to those that relate to frequencies, timings and maximum fares.

62. The Government’s aim in all the above is to prevent ill-conceived, vexatious or frivolous objections, while protecting the legitimate interests of operators involved in the provision of local services who would be affected by the scheme. LTAs and operators would be well advised to work closely together in partnership to identify mutually beneficial packages of facilities and standards, with a view to avoiding the need to follow the formal “admissible objections” process. This process is intended to be pursued only as a last resort where agreement cannot be reached.

How are “relevant operator” and “admissible objection” defined?

63. The QPS Regulations define a “relevant operator”¹⁴ as one who is operating services which have one or more stopping places in the area to which the scheme relates – or has submitted an application to register such services – when the local authority first gives notice of its intention to make a scheme. If a relevant operator applies to vary or cancel his service registrations in such a way that he would no longer have any services with stopping places in the area to which the scheme relates, that operator ceases to be a relevant operator. An admissible objection¹⁵ is defined as an objection which is made under the procedure prescribed in the regulations¹⁶, and which satisfies either or both of the specified grounds for objection.

¹⁴ See regulations 5 and 6.

¹⁵ See regulation 7.

¹⁶ See regulations 8 to 15.

What are the grounds for objection?

64. There are two grounds for an admissible objection, specified in regulation 7(3):

- **that it would not be practicable for the operator who has lodged the objection to meet the standard of service specified at the time they would come into effect, in relation to a service which that operator was providing (or had submitted a registration application to provide) at the time the LTA gave notice of its scheme proposal.** This might be because relevant operators would need more time to procure more vehicles, or upgrade existing ones, or to take on more staff, but the proposed scheme had not allowed them adequate time to do so.
- **that it would not be commercially viable for that operator, acting in a competent and efficient manner, to provide services to the standard specified.**

65. It follows from the above definitions that a “relevant operator” should frame his objection in terms of the impact of the scheme on the services he operates. General concerns about a scheme, if they have no impact on his own registered services, cannot amount to an “admissible objection”. The judgement about “commercial viability” would need to take into account all of the objecting operator’s services that would fall within the area to which the scheme relates (termed “relevant services” in the QPS Regulations¹⁷). So while an objection could relate to a particular standard within the scheme, the question of admissibility would also take into account the viability of other services provided by the operator under the scheme and whether, taking all those services together, the operator could be expected to secure an appropriate rate of return.

66. This judgement of commercial viability will need to take into account the costs and revenues that are likely to accrue to the operator – acting in a competent and efficient manner – as a result of operating its existing services to the standards required under the scheme. This includes taking into account cost savings and increased revenues resulting from the provision of facilities by the LTA, and increased costs and revenues associated with the improvements to the standard of services.

¹⁷ See detailed definition in regulation 7(6) to (8).

67. The judgement may also need to take account of any changes in the level of commercial risk resulting from the LTA's commitment to deliver improved facilities, and from any registration restrictions included in the scheme. Material changes in the level of risk could affect the judgement of what constitutes an appropriate commercial rate of return on an operator's investment: in a well-functioning market, lower risk would normally be associated with lower rates of return (and vice versa).

68. The question of whether an operator can be expected to secure an appropriate rate of return is a complex one. To inform the LTA's judgement, the objecting operator will need to submit evidence in support of his objection, and the LTA should provide appropriate assurances about the confidentiality of any information that is commercially sensitive.

69. Though not specifically referred to in the regulations it will also be important for LTAs, in developing their proposals, to have due regard to the effect of frequency patterns within the QPS on connecting and other integrated service patterns. The LTA should also have regard to longer routes which might only be within the area of the scheme for a part of their journey. These factors could have implications for vehicle and staff requirements, and might also have an impact as to whether or not it would be commercially viable for the operator to provide the service in the way proposed in the scheme.

70. In making its case, an operator will also need to consider the timescale of potential benefits accruing from the scheme and the basis on which commercial viability should be judged. No well-negotiated and aspirational scheme (to generate growth in the market) is likely to produce instant commercial success, but many will meet commercial criteria over the medium term.

Are there any circumstances when a relevant operator cannot make an admissible objection?

71. Where a standard of service in a scheme is to be met by an operator under the terms of a subsidised service agreement, the requirement for there to be no "admissible objections" does not apply in relation to the application of that standard to the subsidised service. This is because operators should not be able to object to a requirement where the LTA is providing a subsidy to an operator to meet that requirement.

What is the procedure for making an objection?

72. Under the process specified in the regulations, an objection must be made in writing to the local authority in accordance with set timescales, and must include a statement describing the basis of an operator's objection, including evidence as to why the operator believes that either or both of the grounds of objection (see regulation 7(3)) are satisfied. The LTA may request further evidence from the operator if it considers this necessary to enable it to determine the question of admissibility. Once the LTA has made a decision as to whether the objector is a relevant operator, and whether the objection is admissible, it must inform the operator in writing. If an operator is unhappy with the decision of the authority, he may refer the matter to the traffic commissioner for a determination.

73. Where, in considering whether the objection is admissible, the traffic commissioner has to make a determination as to whether the second ground, on commercial viability, has been made, the traffic commissioner may seek the advice of an expert assessor. It is for the commissioner to consider procedural issues such as whether a hearing is needed, based (among other things) on the nature of the evidence submitted by the operator to the LTA (which will also have been sent to the commissioner when the objection is referred to him). Powers are in place under section 54 of the Public Passenger Vehicles Act 1981 for the traffic commissioner to hold hearings, or particular parts of a hearing, in private where confidential information is being discussed.

74. The process set out in the regulations consists of the submission of applications, and the making of decisions and determinations, in a structured and formal manner. But within that process, the Department would expect authorities to engage positively with operators who either have, or are likely to, make an objection to try and find a mutually acceptable solution without recourse to the full objection procedure. It would also be helpful, where an operator registers an objection, to indicate what changes to the proposed requirements would be sufficient for that operator to withdraw his objection. This may allow the LTA to make adjustments to the scheme so that it can proceed without objection.

How long does the process take?

75. The procedure prescribed in the QPS Regulations sets clear deadlines for each stage of the process. The Regulations also stipulate that if either party fails to meet a deadline, for example in providing further information to either the authority or the traffic commissioner, a determination can nevertheless be made. On that basis, the overall timetable for implementing a QPS should not be significantly affected (unless the authority has proposed requirements which are unrealistic or unachievable, in which case an operator's objection is likely to be admissible and further time will need to be allowed to revise the proposals).

76. An example timetable, setting out the key stages of the admissible objections procedure, follows. It assumes, for illustrative purposes, that a particular QPS might take 18 weeks, from when the LTA first publishes a notice and launches a consultation about the proposal, to when the scheme is made. In the "best case" scenario, where no additional information is requested by either the LTA making the original determination, or the traffic commissioner, the admissible objections procedure would add just one week to the overall timetable. In the "worst case" scenario, where additional information is requested, the admissible objections procedure would not be expected to add any more than nine weeks to the overall timetable. But in practice, the additional time may be less than this, because many of the stages in the process are within the LTA's control and could therefore proceed more quickly than the time limits stipulated.

Timescales for admissible objections process (assuming objection is referred to the traffic commissioner, but not upheld)

	Weeks (no A/Os)	Weeks (with A/Os) Best case	Weeks (with A/Os) Worst case
<i>Publish s.115(1) notice and launch consultation</i>	0	0	0
Deadline for A/Os		4	4
LA requests further info (if needed)		-	6
Operator must provide further info		-	8
LA must determine whether an objection is admissible and inform the objector		8	12
<i>Public consultation period closes</i>	13	13	13
Objector appeals LA determination to the TC		10	14
Lead authority provides supporting information to the TC		12	16
TC requests further information		-	18
Further information must be provided		-	20
TC must determine the matter and notify all parties		16	24
<i>Decision about final content of scheme, in light of consultation and any objections</i>	17	18	26
<i>Scheme made</i>	18	19	27

77. The QPS Regulations also provide scope for particular time limits to be extended, but this would be only by mutual agreement between the LTA and the operator, or at the discretion of the traffic commissioner (but this discretion may be exercised only where the traffic commissioner is of the opinion that the case cannot be dealt with fairly and justly within the constraints of the prescribed time limits).

What happens if the traffic commissioner finds an objection is admissible? Does the authority have to go right back to the start of the process, and re-consult on a new set of proposals?

78. Where the traffic commissioner has determined that there is an admissible objection, he may (but is not obliged to) make recommendations as to how the requirements as to frequencies, timings or maximum fares might be modified to render the objection inadmissible. Such recommendations would need to be clear and specific, so that it will be readily apparent whether or not the LTA has followed them.

79. Where an objection is found to be admissible, the LTA may:

- remove the particular requirement from the scheme, and then make the scheme. The 2000 Act does not require further consultation in this case, though the LTA should exercise discretion on this point, taking into account the particular circumstances of the case. Once the requirement has been removed, there is no further opportunity to lodge “admissible objections” before the modified scheme is made.
- amend the requirement in accordance with any recommendations made by the traffic commissioner. Again, the 2000 Act does not require further consultation, but the LTA should exercise discretion. There would be no further opportunity to lodge “admissible objections” before the modified scheme is made.
- propose to amend the requirement in some other way (either in a way which differs from the recommendations of the traffic commissioner or, where the traffic commissioner has made no such recommendations, in such a way as the LTA considers will address the objection which has been upheld). In such a situation, the LTA must notify the objector of those proposed modifications, giving him the chance to withdraw his objection in respect of the requirement as modified. If the objection is not withdrawn the LTA will need, if it wishes to include the modified requirement in the scheme, to refer the matter back to the traffic commissioner. To avoid a long-drawn-out process, however, the LTA should take full account of the objector’s concerns when revising the requirements.

- enter into a subsidised service agreement (either under *de minimis* rules or by competitive tender), under which an operator is paid a subsidy in exchange for agreeing to meet the standard of service to which the admissible objection relates. If such an agreement is in place, any objection to the requirement in question ceases to be admissible.

80. It would also be an option for the LTA to abandon its QPS proposal altogether, although it is to be hoped that a more positive way forward would normally be found.

81. In none of these situations is the authority under a statutory obligation to fulfil the requirements of section 115 of the 2000 Act (notice and consultation) a second time, although the more general duty to involve local persons in the exercise of its functions where the authority considers it appropriate (under section 3A of the Local Government Act 1999) would apply in the same way as to any other local authority functions.

Establishing a QPS

What consultation is needed before establishing a QPS?

Preliminary steps

82. Prior to the statutory consultation procedure prescribed in the 2000 Act, and at an early stage of planning a QPS, LTAs are advised to make informal contact with bus operators, and with the Highways Agency where there is potential for impact on the trunk road network. In addition, where the LTA is not also the local traffic authority for any road likely to be affected by the scheme (e.g. where the LTA is the Integrated Transport Authority), the LTA is also advised to make informal contact with the traffic authority. These steps will ensure that the published proposals come as no surprise and that operators and other interested parties have a chance to comment on the feasibility and acceptability of the proposals in advance of the formal consultation.

83. Operators will need to be willing partners in a QPS in order for it to deliver its objectives. For practical reasons, therefore, the LTA will need to be offering facilities that are of sufficient benefit (e.g. are likely to generate sufficient patronage growth) to justify asking operators to invest in the proposed improvements to the standard of their services.

84. Where it is proposed to include requirements relating to frequencies, timings or maximum fares, such requirements must be fully consulted upon, and operators given the opportunity to discuss any concerns and conduct effective negotiations with the LTA before, during and – if necessary – after, the formal period of consultation. The QPS Regulations set out the detailed requirements and procedure for making a scheme which includes such requirements. But the Government expects that the "consultation" version of a QPS would not only spell out the initial requirements as respects frequencies, timings or maximum fares, but would also include provisions explaining how and when those requirements might, or must, be subsequently reviewed and revised.

85. It is worthwhile at this stage also considering any matters that might be the subject of separate agreements between operators and the LTA, to underpin and support the QPS. Where the LTA is an Integrated Transport Authority (ITA), it is also important to initiate early meetings with the relevant metropolitan district council(s) (MDCs) that may be joint sponsors of the Scheme. It is recommended that the need for this preliminary consultation is specified in any voluntary agreement developed prior to a QPS.

Notification

86. The first formal stage is for the promoting LTA to publish a notice of the proposed QPS in one or more newspapers circulating in the area which the scheme would cover. The LTA will wish to consider how best to engage a wide range of interested parties through their choice of media. Either the notice itself must give full details of the contents of the proposed scheme (including details of the facilities and standards of service proposed to be included, and any registration restrictions and criteria), or it must state where such details may be inspected.

Consultation

87. After giving notice, the LTA must formally consult the stakeholders. It is obligatory to consult:

- all operators of local bus services that they think would be affected by the QPS;

- organisations representing the users of local bus services. In the absence of a known local group, the LTA should consult the national organisation, Bus Users UK, which can be found at www.bususers.org, and in due course Passenger Focus (whose remit the Government has announced it intends to expand to cover buses and coaches).

LTA should ensure there is thorough and positive consultation with disability groups (in this respect it is vital to ensure that needs of disabled persons are represented in the consultation process). Often there are relevant local disability groups, and these groups should be involved in the consultation process. But authorities should also consider whether there are disabled people whose interests are not adequately represented locally, and how best to ensure those interests and needs are taken into account in the consultation process (this might, for example, include consulting regional or national disability organisations, or even individuals). The LTA must have regard to the obligations contained in section 112(2) of the 2000 Act with regard to disabled persons, older persons, and those who have mobility problems.

As with any consultation, the Department would encourage authorities to consider how best to involve other specific social groups who might have particular transport needs – for example children and other young people, older people and ethnic minority groups. This might involve actively engaging with local organisations representing such groups, and (in the case of young people) local schools and colleges;

- other relevant local authorities that they think would be affected by the QPS - these include other LTAs, district councils, and also, where appropriate, National Park Authorities and adjoining local authorities in London, Wales or Scotland;
- the traffic commissioner with responsibility for each traffic area affected by the QPS;
- the chief officer of police for each police area affected by the QPS.

88. The LTA should also consult such other persons as they think fit. This could well include anyone likely to be affected by works on the facilities that need to be completed before the scheme can commence (i.e. development of the facilities). There is no fixed time limit for consultation but sufficient time should be allowed to ensure that those who are likely to have views have a reasonable opportunity to make a considered response. (The Government's own practice is to allow a minimum of 12 weeks for consultation except in cases of urgency).

89. It would also be good practice for a LTA when consulting on a proposed scheme to set out a summary assessment of how the scheme meets the competition test.

Who proposes and develops a QPS and how?

90. It is for LTAs to develop proposals for a QPS, though in practice the Department would expect them to do so in close collaboration with bus operators and perhaps other interested parties, and the initial suggestion for a scheme could come from external sources. Where a highway authority is also the LTA the situation is relatively straightforward, though the Highways Agency will need to be involved if the QPS affects a trunk road. A scheme crossing one or more LTA boundaries can be established provided it is made jointly by both or all the LTAs.

91. In the metropolitan areas, the LTA concerned is the Integrated Transport Authority (ITA). However, that authority does not have responsibility for highways or traffic management - those belong with the metropolitan district councils (MDCs)¹⁸. So in cases where a QPS will require a TRO to form part of, or enable a facility, the scheme must be made jointly by the ITA and the relevant MDC(s) in accordance with section 114(7) of the 2000 Act.

92. Where a QPS can be made without recourse to a TRO, there may nevertheless be highway or traffic aspects to it which make it highly desirable, if not essential, for an MDC to be directly involved. There may be features of the scheme which cannot be delivered without the MDC's participation. In cases where there is no formal role for the MDC in the QPS, it may be advisable for the ITA and MDC to enter into a legally binding agreement to ensure that this participation is achieved in practice (and for the full period of the QPS).

¹⁸ However, the 2008 Act includes provisions enabling future secondary legislation to delegate transport-related functions of MDCs to ITAs.

93. Likewise, whilst nothing in the 2000 Act precludes the involvement of other parties such as the Police or Highways Agency from being involved in a QPS, they have no formal role in 'making' the scheme. However, it is advisable to secure the commitment from the third party through a legally binding voluntary agreement which may also enable a wider range of commitments to be agreed. This also applies to a QPS being supported by operator specific agreements, which may refer to and dovetail with the QPS, and provide greater enhancements in overall service provision and quality. Indeed, there may be great value in a bilateral process linking voluntary agreements directly to the terms and durations of the QPS.

94. It is for the LTA to consider how best to go about developing a scheme, but early involvement of all relevant parties is a key to success.

"Lead authority" for a joint scheme

95. Where a scheme that includes requirements about frequencies, timings or maximum fares is made (or proposed to be made) jointly by two or more LTAs, the draft regulations require a "lead authority" to be specified in the scheme. The purpose is to provide a single channel for communications between the local authorities and - for example - bus operators, the traffic commissioner and other relevant parties. Each authority will retain full responsibility for the decisions about how schemes will work in their areas, but LTAs will need to work in close partnership to deliver a joint scheme. Indeed, they are under a statutory duty to cooperate with each other when exercising functions relating to quality partnership schemes, and regulation 3(3) of the QPS Regulations requires the lead authority to act in accordance with the representations of the other authorities, wherever appropriate.

What does an operator do if it does not like what is proposed?

96. We would expect any local authority contemplating introducing a QPS to enter into preliminary discussions with local operators prior to the first drafting, and during the production of proposals. LTAs will want to give thought to the best way to include smaller, as well as the major, operators within these discussions. In that way, through the spirit and practice of partnership, the content of the QPS (and, importantly, any voluntary agreement) is likely to meet the aspirations of all parties. As well as this informal consultation, the LTA must follow the formal consultation requirements set out in section 115 of the 2000 Act. However, it would be expected that all the issues that an operator might raise at this stage would have been the subject of informal discussion. Operators should not wait

until the formal consultation phase before raising their concerns.

97. Additional consultation requirements apply if the proposed QPS contains any items of infrastructure which are already in place prior to the making of the scheme. This is outlined in paragraphs 32 to 36 above.

98. If a proposed QPS includes any requirement as to frequencies, timings or maximum fares, then relevant operators have the right to object, and if it is found to be an “admissible objection” the scheme cannot go ahead with that requirement included. This is fully explained in paragraphs 61 to 81 above.

99. When a LTA makes or varies a QPS, it must ensure that the competition test in Part 1 of Schedule 10 to the 2000 Act is met, and it would be helpful for the LTA to publish its assessment of how that test is met. If, despite the LTA’s assessment, an operator or other interested party considers that the test has not been satisfied, in that it raises a barrier to entry or competition which is disproportionate, then it may refer the matter to the Office of Fair Trading for investigation. In addition, bus operators would have the opportunity to register objections to the inclusion of requirements relating to frequencies, timings and maximum fares, and the QPS could include such requirements only if any objections from “relevant operators” have been found not to be admissible (see above).

How does the Competition Test apply to a QPS?

100. A LTA can only make or vary a QPS if it satisfies the requirements of the Competition Test in Part 1 of Schedule 10 to the 2000 Act. The test is satisfied if:

- the scheme does not have a significantly adverse effect on competition, or
- the effect it has on competition is proportionate to the achievement of one or more of the following purposes:
 - improving the quality of vehicles or facilities covered by the scheme;
 - securing other improvements to local services of benefit to their users;
 - reducing or limiting traffic congestion, noise or air pollution.

101. The specified standards of service should be ones which can be reasonably met by any competent and efficient operator, unless the standard is higher but the benefits derived from its application outweigh the costs of compliance (in this respect, an assessment of the benefits and the costs will, in all likelihood, take account of the extent to which existing passengers are prepared to pay for that compliance – and whether any new passengers will be attracted by the improvements being provided). For instance, a requirement to operate buses equipped to give a high standard of accessibility for disabled people will probably be considered reasonable, as the benefit to the travelling public would justify any operator investment (provided the facilities provided under the QPS were themselves commensurate with vehicle operation e.g. built up kerbs, bus stop boarders, enforced clearways at stops). However, requirements should generally be specified in terms of outputs or outcomes, rather than inputs that would unnecessarily restrict the freedom of operators in the way they procure vehicles or other inputs to their business. For example, a requirement to operate vehicles built by a particular manufacturer is likely to be unreasonable.

102. The competition test is different from the grounds on which an “admissible objection” may be made. The purpose of the competition test is to ensure that any adverse effect on competition (which in turn can be detrimental to consumers) is outweighed by the wider benefits to society. The “admissible objections” process focuses on the potentially adverse effects specifically on operators and does not factor in the wider benefits to society as a whole.

103. The OFT is entitled to investigate whether the making or varying of a scheme complies with the competition test. It may do so if the operator affected or likely to be affected by the QPS considers that the requirements of the competition test are not met, and having failed to persuade the LTA, refers the matter to the OFT. As previously mentioned in paragraph 8 above, guidance on the application of this and other competition tests is available on the Office of Fair Trading’s website (www.offt.gov.uk).

104. If the OFT finds that the competition test is not met, the LTA would not be able to proceed with the scheme in its current form, and the OFT may give a written direction either prohibiting the scheme, or (if it has already been made) requiring it to be varied or revoked. There are no powers for the OFT to impose financial penalties on any party if the making of a QPS is found not to meet the competition test.

105. Schedule 10 to the 2000 Act also contains provisions about other types of agreement – see the flow chart at Annex C and the “Part 2” test described in the competition guidance referred to above. Where an agreement is made between operators (described in the Schedule as a “qualifying agreement”) in support of a proposed QPS, the Part 2 test will apply to that agreement provided it is certified by the LTA as being in the public interest and not including unnecessary restrictions on competition, and provided it is not a price-fixing agreement.

How do the competition rules apply to agreements between operators entered into in support of a QPS?

106. It may be appropriate for operators to enter into agreements alongside a QPS - e.g. to agree how they will collectively meet a minimum frequency specified in a QPS. If the LTA were a party to such an agreement, and were providing “facilities” or other benefits to local people as part of the agreement, then that agreement could be a voluntary partnership agreement (VPA)¹⁹ - falling to be considered within the competition test in Part 2 of Schedule 10 to the 2000 Act.

107. However, if the LTA were not a signatory to that agreement, but had certified that it was in the public interest and did not include unnecessary restrictions on competition, then that agreement would also fall to be considered within the Part 2 test mentioned above. The LTA may wish to play a role in facilitating or brokering such an agreement, and this is likely to be helpful to the operators concerned as it should give them a guide as to whether or not the LTA is likely to be prepared to certify a particular agreement.

108. The important thing to bear in mind during any brokering phase is that the operators will wish to avoid entering into an agreement between themselves until the end of the process. This is because it is the making of an agreement that is likely to engage competition law in this context. Keeping a written record of any discussions, agreed by each of the participants, should help to demonstrate that no agreements are entered into until the appropriate time. In brokering an agreement of this kind, the LTA should also ensure that operators wishing to participate in the discussions are given an opportunity to do so.

¹⁹ Defined in section 153(2) of the 2000 Act.

109. If an agreement of the kind envisaged here does not have local authority endorsement, it would need to satisfy the relevant provisions of the Competition Act 1998. Further details are contained in the flow chart at Annex C, and in the separate guidance on competition issues (see paragraph 8 above).

How can a QPS include requirements as to frequencies and timings in a multi-operator environment?

110. Suppose a local authority and bus operators wish to work in partnership to provide a minimum of four services per hour on a particular route, with a maximum interval of 15 minutes between services, supported by a new bus lane at a key pinch-point on the route. Suppose further that, prior to the QPS, there are two operators (A and B) each operating two services an hour, but with an overall effect of services being provided at irregular intervals. The process could work as follows:

- The QPS specifies the required standard of service as "four services an hour, with a maximum interval of 15 minutes between services". Because it relates to frequencies and timings, the local authority would engage in negotiations with bus operators, with a view to agreeing how they would participate in achieving this service pattern.
- The QPS also makes clear that, where a specified set of criteria is met, it would be inappropriate for additional services to be registered in the area of the QPS. This could be done by the inclusion of a suitable registration restriction in the scheme. The registration criteria might seek to restrict "disruptive" entry to the market (e.g. by preventing registrations of additional services not meeting the partnership standards where there is insufficient demand to sustain them alongside the existing partnership services), while preserving the possibility of "beneficial" entry (e.g. to meet sustained demand for increased frequencies).²⁰

²⁰ For example: "the registration of a new service should not be permitted if it would materially affect the commercial viability of services already being provided under the Scheme", or "registration of a new service should not be permitted unless there is evidence of significant passenger demand that is not being met by existing services provided under the QPS". Although such criteria would likely have an adverse impact on competition, they could nevertheless be justified as part of a QPS - so long as this adverse impact was proportionate to the benefits of the Scheme (in accordance with the competition test in Part 1 of Schedule 10 to the 2000 Act).

- Individually, neither A nor B wishes to run four services per hour. So neither operator, on his/her own, can provide the necessary undertaking to the traffic commissioner that he/she will meet the "standard of service" specified in the QPS. In the absence of a QPS neither would be prepared to revise their timetables (because, for example, their own operational priorities will often mitigate strongly against it), but, in light of the benefits arising from the proposed local authority investment, both are prepared to review and amend their timetable commitments.
- Therefore, the two operators could reach an agreement (separate from the QPS) under which A will operate services at xx00 and xx30, while B will operate services at xx15 and xx45.²¹
- The two operators can then give an undertaking to the traffic commissioners that they will (between them) meet the standard of service specified in the QPS (with suitable caveats to allow flexibility if one operator subsequently failed to deliver its commitment – see below). They would both then have access to the facilities provided under the scheme.
- The operators might wish to include provisions in their agreement as to the terms under which one operator may withdraw services. This might include provisions as to notice periods (to enable the remaining operator to put in place alternative arrangements to ensure that the frequency specified in the QPS can continue to be met), or as to compensation.
- Alternatively, if the remaining operator is unable to provide services to the required frequency (either alone or in cooperation with another operator), it may be necessary for the local authority to review and modify the frequency requirements in the QPS - or to enter into a subsidised service contract with an operator to make good the "gap" in provision. There should be no obligation however for the remaining operator to take over the service. If another "partner" cannot be found - either voluntarily or by means of a subsidy agreement - the local authority will need to review and vary the relevant requirement in the scheme, so that the remaining operator

²¹ This agreement would need to meet either the competition test in Part 2 of Schedule 10 (if it is a "qualifying agreement" which has been endorsed by the LTA), or that in section 9 of the Competition Act 1998 (if not), in order to be lawful.

is not forced to withdraw his undertaking to the traffic commissioner. In this respect, one operator should not be held liable for the decisions of another.

- Where operators give a joint undertaking to the traffic commissioner, it might be advisable for them to draw up a legally binding voluntary agreement setting out what would happen if one party wishes to reduce or withdraw services.

111. This approach would provide greater stability for participants in the QPS, while still preserving the possibility of "beneficial" entry into the market. Either A or B could register additional services - unless the traffic commissioner concluded that such registrations would be detrimental (as per the criteria set out in the QPS itself). In this respect, there should be a presumption that providing services in excess of the basic requirements will – so long as there is evidence of sufficient and sustainable demand for those additional services – normally be beneficial.

112. A new operator, C, could also enter the market in the same way. If C wished to provide additional services alongside A and B's services, and if the traffic commissioner concluded that such competition was consistent with the registration criteria set out in the QPS, then C could register additional services.

113. In these circumstances – though it would not be necessary so long as the original QPS terms were still being delivered – the local authority might wish to review the frequency requirements, with a view to reflecting the new, increased level of commercially viable frequency.

Making and introducing a QPS

What is involved in making and introducing a QPS?

114. Following consultation, the LTA may make the QPS, either as originally proposed or with modifications. Modifications, where made, should take account of views expressed in response to consultation, though some may also be necessary simply because external circumstances have changed since the QPS was originally proposed. Modifications might arise, for example, as a result of consultation responses, changing external circumstances, or an admissible objection.

115. If modifications are likely to change the scheme significantly, or in ways that the consultees could not reasonably have anticipated, the LTA would be advised to re-consult at least those parties who would be specifically affected by the changes (and who might have responded differently had they known about the changes). Re-consultation is not a statutory requirement under the 2000 Act, so each case must be considered on its merits in line with the general duties of the authority to involve local persons in the exercise of their functions where appropriate.

116. Nevertheless, where a LTA makes changes to provisions relating to frequencies, timings or maximum fares in response to the consultation process, it should discuss those with affected operators before making the scheme. If modifications to the scheme have the effect of bringing additional operators within the definition of a "relevant operator", the QPS regulations require the LTA to serve an appropriate notice on those operators, so as to provide an opportunity for them to consider the requirements and make objections, if appropriate.

117. The 2000 Act does not specify what is meant by "making" a scheme - the formal procedure for adopting it will depend on the practice of the LTA concerned. For example, a resolution of the Full Council, or Executive Committee or ITA, may be necessary and a copy may need to be signed by an appropriate member or officer. However, the effect of a scheme being made is clear enough. It means that the scheme details are finalised, with specification of:

- the facilities to be provided under, or covered by, the QPS (whether to be provided from the outset of the scheme or from a later, specified date);
- the standard of services to be provided by bus operators under the scheme (as above);
- the date on which it comes into operation (see below);
- the period during which it remains in operation (see below).

118. The date of coming into operation must not, in any event, be less than 3 months after the date on which the QPS is made. But if one or more TROs are needed to give effect to the Scheme then the date must also be at least 3 months after the date on which the TRO (or the latest of those TROs) is made. However, these are only minimum times, and the important issue is that sufficient time is allowed for the LTA to put in place the necessary facilities and for operators to ensure they can provide services to the specified standard.

What steps need to be taken after the QPS has been made?

Notification

119. Once the QPS has been made, then within 14 days, a further notice must be published in one or more newspapers circulating in the area to which the scheme relates. A copy of this notice must be sent to:

- all operators of local services that would be affected by the scheme;
- the traffic commissioner for any traffic area affected by the scheme.

120. As with the original notice, it must either give full details of the QPS or state where they may be inspected. If it is a modification of the original proposal, that fact must also be stated in the notice. When giving notice to the traffic commissioner, it will be important for the LTA to provide full details of the precise area to which the scheme relates, and of any registration restrictions it contains. The traffic commissioner will need to be aware of those details, because of their role in the registration restriction process.

Postponement

121. Although the QPS must specify the date (or dates) from which the prescribed facilities must be made available, and services must be provided to the prescribed standard, there may be instances where, due to unforeseen circumstances, it becomes impossible to make all the necessary arrangements by the specified date(s). There is therefore provision for postponing implementation dates for up to (but no more than) 12 months from the original proposed date. This applies equally to

facilities and standards that were due to apply from the outset of the scheme, and to those that were due to be introduced at a later date specified in the scheme. However, before any postponement can be made, the LTA must:

- consult all the operators they think would be affected by the QPS;
- review and, if necessary, revise the commitments expected from operators. In doing so, the LTA should bear in mind the question of proportionality between the facilities being provided by the LTA and the standard of service expected from the operators; and
- give notice of the postponement decision (not more than 14 days after reaching it) in the same way as the notice given at the time that the scheme was made, i.e. in local newspapers and directly to affected operators and the relevant traffic commissioner(s).

Implementation

122. The LTA making the QPS has a duty to ensure that all the facilities are in place and useable by the date (or dates) specified in the scheme, and to ensure that these are maintained for the duration of the scheme. There is an exception to cover the temporary withdrawal of facilities due to circumstances beyond the LTAs control.

123. Unless their services are excluded from the scheme, operators wishing to use the facilities provided under the scheme will need to meet the applicable standard under the QPS when using the facilities. The legislation requires such operators to give a written undertaking to the relevant traffic commissioner that they will provide the standard of services required by the QPS when using the relevant facilities. It would be sensible for the QPS to include a "Form of Undertaking" for this purpose as a schedule. The operator is then required to provide the services to this standard for the duration of the scheme whenever using the facilities, except for any period when they are temporarily unable to do so owing to circumstances beyond their control. The traffic commissioner has the powers to enforce compliance²² with that undertaking, i.e. that:

²² The powers of enforcement available to the traffic commissioner are powers to attach conditions to the licence under section 26 of the Transport Act 1985, or to impose sanctions under section 155 of the 2000 Act.

- any operator that has given the undertaking adheres to the necessary standard of services;
- any operator which has registered services in the affected area, but has not given the undertaking (or which has given the undertaking but is not complying with it) is prohibited from using the facilities provided under the scheme, but not from operating in general traffic along that corridor, if in doing so it does not use any defined facilities;
- in the case of services that are excluded from the scheme subject to conditions, those conditions are complied with (the conditions have the same status as registered particulars of services).

124. The traffic commissioner does not have power to cancel an existing service registration simply because the operator has chosen not to give an undertaking to meet the standard of service.

How long does a QPS last?

125. The 2000 Act provides that a QPS must remain in operation for at least 5 years. There is no upper limit, but LTAs should bear in mind that policies and service requirements are likely to change over time and that schemes should therefore be reviewed at reasonable intervals. Review procedures for the QPS, if not appropriate for inclusion in the scheme itself, can be specified in a supporting agreement. The 2000 Act requires there to be a definite end-date for a scheme, though this may be subsequently varied, provided the variation procedure specified in section 120 of the 2000 Act (which applies to any variation of a scheme) is complied with. The same procedure applies for revoking a scheme before the end-date, should the need arise, although such early revocation can only be done with the consent of all bus operators providing services in accordance with the scheme (and such consent must not be unreasonably withheld). Both procedures require public consultation.

Managing and enforcing a QPS

How should a QPS be monitored?

126. Once a QPS is in place, all the participants will want to monitor the delivery of key outputs and whether it is achieving the objectives that they each expected from the scheme. It would be good practice for all participants to agree to a formal governance structure in advance of the start of the scheme, perhaps with a board headed by an independent chair (e.g. a representative of the business community), to oversee progress and – importantly – arbitrate over differences which may arise during the course of the scheme. LTAs and operators would both wish to have regard to any proposals or recommendations coming from this board. Indeed, an independent chair/mediator would be well placed to help the partnership come into being, avoiding formal objections, and minimising the need for any parties to seek the intervention of the traffic commissioner during the life of the scheme. An independent chair or mediator might also have a role if, for instance, standards of service were not met consistently or facilities were not delivered on time, and during periods in which particular standards of service in the scheme are under review.

127. As part of this, it would also be good practice at the start of implementation to set a formal review date perhaps 6 to 12 months ahead so that the parties involved can share experiences and report impacts. It would be appropriate at the inception of the scheme to agree what will be monitored, how, over what timescale, and which parties are responsible for which aspects of monitoring. Issues of commercial confidentiality should be tackled at this stage to avoid problems at a later date and must take into account the obligations of the LTA making the scheme in relation to the Freedom of Information Act 2000.

128. In addition, a formal review process should be initiated 12 to 18 months before the date set for the termination of the scheme. This enables all parties to review their position and ensures that a fully informed decision can be taken by the LTA as to whether to vary the scheme so as to extend the period over which it will operate.

129. The nature of the partnership should be dynamic, allowing development as the need arises and opportunities present themselves. A continuing and open dialogue between the various parties should be encouraged (e.g. through the independently chaired board structure described above). And the governance arrangements set up at the outset

should provide scope for operators to provoke a review – and revisions – to the scheme.

130. Notwithstanding the above, there is a process in the 2000 Act for varying any scheme, and this must be followed if for example any LTA wishes to add any facilities, or update the standards of service. Any such variation will require the same notification and consultation procedure as is required in the making of any Scheme.

Can an active QPS be varied? What is the procedure?

131. The notification and consultation procedure for a LTA wishing to vary a QPS is currently the same as for making a new scheme. Other than where the variation would require the making of a TRO, there is a power for the Secretary of State to modify this procedure by regulations, but at present no such regulations have been made.

132. Where the LTA and bus operator(s) wish to link a series of planned provisions of facilities with a series of tiered standards of service (see the comments above on the investment/commitments on both sides being proportionate), this can be achieved through the definition of "Facilities" and "Standards of Service" in a scheme to include additional items from certain dates. The LTA would have to provide the added facilities, and operators would have to provide services to the newly-applicable standard at the dates specified. By this means, the need for modifications to the QPS to reflect additional facilities would be avoided, although local authorities would need to be sure when they make the scheme that they could deliver the facilities as specified by the relevant dates if a postponement or other variation of the scheme is to be avoided later.

133. However, specific arrangements apply for the review of requirements about frequencies, timings and maximum fares. Where such requirements are revised following the completion of a review, the legislation provides for any such revision not to be treated as a "variation" to which the consultation and other requirements of section 120 of the 2000 Act apply.

What about reviewing and revising requirements about frequencies, timings and maximum fares in a QPS?

134. The legal framework for QPSs recognises that requirements included in a scheme at the outset may need to be reviewed and revised over time in the light of changing circumstances. This is especially true of requirements about frequencies, timings and maximum fares, which will

have a substantial impact on the ongoing commercial viability of services provided under a scheme. In this regard, the legal framework also seeks to strike a balance, ensuring that passengers can benefit from network stability and that schemes cannot be undermined by an endless cycle of reviews, while also allowing for schemes to evolve in response to material changes in circumstances.

135. Part 3 of The Quality Partnership Schemes (England) Regulations 2009 (S.I. 2009/445) sets out the procedures for reviewing requirements about frequencies, timings and maximum fares. The arrangements are slightly different in relation to maximum fare levels.

Maximum fare levels

136. Where a scheme includes requirements about maximum fares, it may do so either in the form of a fare level (e.g. £1.50) or as a formula (which might include variables such as cost indices reflecting operators' key input costs, determinants of patronage, etc). The latter approach may be more complex, but might also have the advantage of requiring less frequent review.

137. Where a scheme includes maximum fare *levels*, it must also specify a maximum interval between reviews of those levels (referred to in the Regulations as the "maximum fares requirement period"). The interval must be no more than 12 months – i.e. maximum fares must be reviewed at least annually, as a matter of course. If an authority fails to review within the appropriate interval, any participating operator can request that they do so – and if they fail to start the review process within 14 days of that request, the maximum fare level lapses automatically.

138. There are also provisions for additional reviews to be carried out in certain circumstances. Where market conditions have changed "materially" (see below) since the last review:

- the LTA may instigate a review of requirements;
- where three or more participating operators whose services are affected by a particular set of requirements (or 50% of such operators, if fewer) request it, then the LTA must carry out a review of those requirements.

139. In addition, the LTA may instigate a review of existing requirements where they are no longer consistent with its local transport policies.

140. The intention of these provisions, and the related provisions about frequency and timing requirements discussed below, is to ensure that the LTA carries out an additional review of particular requirements where circumstances have genuinely and significantly changed, but equally to ensure that schemes cannot be subject to frivolous or vexatious requests for reviews. Accordingly, the Regulations place a duty on the LTA to review requirements where requested by the requisite number of operators, but also allow the LTA – in effect – to refuse to carry out a review where there has not been a change in market conditions that is sufficient to justify a review.

141. In essence, the test should be: *have market conditions changed to such an extent that objections that would not have been “admissible” before the change might now have become admissible after the change?* If market conditions have not changed to that extent – i.e. the change is not likely to affect the overall judgement of “admissibility” – then the LTA is not obliged to carry out a review.

142. This judgement about “material change” will inevitably depend on the local circumstances. However, it is likely that a major change – for example the forthcoming closure of a substantial retail outlet, major employer, school, hospital etc.– is likely to constitute a material change in respect of requirements applying to services whose route serves the facility being closed. Forthcoming changes in timetables on connecting rail, tram or other services are also likely to be “material” in relation to any requirements about timings of connecting bus services. However, a change in market conditions that has only a small impact on costs or patronage is unlikely to be “material” in this context.

Maximum fares formulae, frequencies and timings

143. The arrangements for reviewing maximum fares *formulae*, frequencies and timings are slightly different. In these cases there is no statutory requirement for the scheme to specify a maximum interval between reviews – though it may be good practice to do so. However, a review may be instigated by:

- the LTA, if market conditions have changed “materially” (see above) or if existing requirements are no longer consistent with its local transport policies; or

- by three or more participating operators whose services are affected by a particular set of requirements (or 50% of such operators, if fewer) requesting it, *but only if market conditions have changed “materially” (see above) or if it has been more than a year since the last review of the requirements in question was completed.*

144. In other words, the requisite number of operators can insist on a review *either* if market conditions have materially changed, *or* if it has been more than a year since the last review of the requirements was completed. If neither of these two conditions are met, the LTA is not obliged to carry out a review even if requested to do so. Again, the purpose is to ensure that schemes are not undermined by frivolous or vexatious requests for reviews.

Reviews generally

145. Whether instigated by the LTA or by a request from operators, the starting point for a review is a “review notice” issued by the LTA. This should set out clearly which requirements are being reviewed, and should set a deadline (of between 28 and 42 days) within which participating operators may make representations.

146. 146. Having considered any representations, the LTA must then propose that the requirements should continue to have effect until the next review; cease to have effect; or be revised. The LTA could propose to treat different requirements in different ways: e.g. some could be left unchanged, but others modified. In any case, once the period for representations to be made has ended as stipulated in the review notice, the LTA must notify participating operators of its proposals in writing within 35 days.

147. As when a QPS is first being developed, the intention is that LTAs and operators should work together to identify a mutually acceptable set of requirements. As a last resort, however, the admissible objections procedure would apply to the outcome of a review in the same way as it applies at the outset of the scheme. However, it is likely to be strongly in the interests of operators and LTAs to avoid recourse to these formal procedures.

How can a new operator join an existing QPS?

148. If a new operator wishes to use facilities provided under a QPS that is already in force, either because they wish to register a service that is affected by it, or because they want to use facilities from which they are excluded, they need to give a written undertaking to the traffic commissioner. It would also be appropriate for the operator to let the LTA know in advance of their intentions, so that the authority will be aware of their actions as regards monitoring or enforcement of the QPS. There is nothing in the 2000 Act to limit this procedure to the time when the scheme first comes into force.

149. Where a QPS includes registration restrictions, the traffic commissioner would need to consider whether, taking account of the registration criteria and comments from the LTA and other operators, the application to register the new service should be accepted.

How can an operator leave a QPS?

150. Although a QPS obliges a participating operator to comply with its terms when using the facilities provided under the scheme, it does not, and cannot, oblige operators to participate. A participating operator may leave a QPS by three mechanisms only (other than by ceasing to trade): by cancellation of registration of the services subject to the QPS (so that it is no longer providing a local bus service); by withdrawing its written undertaking to the traffic commissioner to provide the service to the specified standard; or by ceasing to meet its obligations in accordance with that undertaking. If any of these three conditions are met then the bus operator will no longer be entitled to use the facilities detailed in the scheme and will effectively have ended its participation in the scheme.

151. If there are reasons why an operator knows that it may not be able to meet its obligations because of temporary difficulties, then it would be good practice to report the issue to the LTA and indicate what action is being taken by the operator to restore services to the applicable standard. In the context of temporary or unavoidable failures, the LTA may well wish to work with the operator to put appropriate remedial measures in place.

152. Under the QPS model there is no mechanism whereby an operator compensates a local authority if it ends its participation, though this may, of course, be covered in separate bilateral agreements between the parties.

What happens if an operator does not meet its QPS obligations? What is the role of the traffic commissioners and what are their powers?

153. Before any formal action is to be taken, the first step would be for the parties to engage to find a sensible compromise. If after such discussions an operator is still in breach, the LTA may wish to ask the traffic commissioner to intervene. In this case, the formal process is as follows: if an operator has given a written undertaking to the traffic commissioner to meet the service standards required by a QPS, and subsequently fails to meet those standards, the traffic commissioner may either impose a financial sanction on that operator (under section 155 of the 2000 Act), or attach a condition to the operator's licence (under section 26 of the Transport Act 1985). Similarly, the traffic commissioner can penalise an operator that uses the scheme facilities without having given an undertaking to meet the required standard.

154. The penalties in either case are the same as that for failing to operate a local service in accordance with the registered particulars. The penalty may consist of:

- a financial penalty of up to £550 for every vehicle which the operator is licensed to use (this maximum can be varied by regulations);
- an order for the operator to invest a specified sum of money in particular local services;
- an order for the operator to compensate passengers of a specified description; or
- a condition on the operator's licence under section 26 of the Transport Act 1985 prohibiting it from operating specified local services, or any local service (and the consequential cancelling of the registrations of affected services).

155. Where a traffic commissioner orders an operator either to invest in particular local services, or to compensate passengers, and the operator fails to comply, the traffic commissioner may impose a financial penalty up to 110% of the maximum amount (currently £550 for every licensed vehicle).

156. Where a traffic commissioner attaches a condition to a bus operator's licence, those conditions may also be attached to other licences held by the same operator in another traffic area, or held by another undertaking within the same group. Where he deemed it appropriate, a traffic

commissioner in one area could also direct another traffic commissioner to apply conditions to licences held in another traffic area by the same operator, or by another undertaking in the same group. The traffic commissioner receiving such a direction must then attach the relevant licence condition, unless he considers there is a good reason not to do so.

157. In more serious cases, where a condition has been attached to a licence on the grounds that an undertaking to operate services to a particular standard has not been honoured, and that condition is subsequently breached, the traffic commissioner may decide to revoke, suspend or restrict the authorisation of the operator's licence.

158. Section 118(4)(b) of the 2000 Act allows operators to use the facilities provided under a QPS while temporarily not adhering to the standard of services in situations where the operator is temporarily unable to do so owing to circumstances beyond its control.

What happens if a LTA does not meet its QPS obligations?

159. This could arise if the LTA fails to provide, maintain or enforce the facilities throughout the life of the QPS, as required under section 118(1)(b) of the 2000 Act. The LTA is under a statutory duty to provide, maintain and enforce the facilities and failure to do so would amount to a breach of statutory duty. Where the statutory duty is breached, an operator should formally register their concerns with the LTA and seek to negotiate a mutually acceptable way forward. This approach is most likely to be conducive to maintaining a spirit of partnership and to securing a clear future for the scheme, which is likely to be in the interests of both the LTA and the operators concerned. However, if a mutually acceptable solution cannot be found, an operator may consider one or more of three actions, depending on the facts of the case:

- Withdrawal from the QPS
- Instigate legal proceedings to force the LTA to honour its responsibilities
- Instigate legal proceedings to recover any damages from the LTA.

160. However, to safeguard against withdrawal without due cause, a legally binding voluntary agreement could be established with the operator(s).

161. Section 118(2) of the 2000 Act provides that the requirement to provide, maintain and enforce facilities does not apply where the LTA is temporarily unable to provide the facilities owing to circumstances beyond their control. There is considerable scope for LTAs to postpone elements of a QPS (though, as described in previous sections of this Guidance, the authority would need to review and if necessary revise the commitments expected of operators to ensure they remained proportionate to the facilities being provided). It should be noted also that if the actual effect of postponement of key elements of the QPS meant that a LTA was, in effect, in breach of its statutory duty, the procedures described above would apply.

Can a QPS be revoked before the expiry date? What is the procedure?

162. The authority that made the QPS can revoke it provided that they have the consent of all the operators that have given undertakings to meet the QPS standards. The operators must not unreasonably withhold that consent. Revocation is also subject to the same notification and consultation procedure as the making of a scheme.

What happens at the end of the period of the QPS?

163. If a QPS has reached its end date without replacement by a successor, then the standard of services will no longer apply and it will no longer be possible to exclude operators that do not meet these standards from using the facilities provided by the LTA. If it is desired that a Scheme should continue beyond the period originally specified it will be necessary either to vary the scheme (as mentioned earlier in this Guidance) or to establish a new scheme of a similar nature to commence on termination of the old one. Either would involve a repetition of the procedure for notification, consultation and making the Scheme described above (though there is a power for the Secretary of State to modify the procedure in regulations (see above)).

164. For a new scheme, the question of whether an existing facility can be included in that scheme would need to be considered afresh, taking the date of notifying the proposal for a new scheme as the reference point. Facilities first used more than 10 years before that reference date can not be included. Those which were first used more than 5 but less than 10 years previously could only be included if there are no objections from operators (or if any objections have been withdrawn). However, this is not the case if the termination date of an existing scheme is being varied, or if the initial scheme duration exceeded 5 years. Hence in many

circumstances there will be advantages to the participants in the LTA varying an existing scheme rather than making a fresh one.

165. Variation of the scheme would need to be consistent with the competition test in Schedule 10 to the 2000 Act, and earlier references in this guidance to proportionality apply equally here. The benefits arising from some facilities will diminish over time (e.g. conditions of physical infrastructure may deteriorate), but for other facilities may increase (e.g. where traffic congestion is increasing, journey time savings arising from a bus lane may actually increase over time), and this may affect the overall judgement about proportionality.

ANNEX A: Facilities

The definition given in section 114(5) of the 2000 Act provides guidance as to what may be included as a "facility" in a Scheme. This indicates that to be included, the item concerned (be it a building, service, or piece of equipment) must be:

...provided at specific locations along routes served...by local services within the area to which the scheme relates...

Alternatively the building, service or piece of equipment can be "ancillary" to a facility which is provided at a specific location along the route. In addition, section 114(3) of the 2000 Act requires that the authority be satisfied that the facilities (and the provision of local services to the relevant standard):

improve the quality of local services provided in the whole or any part of their area, or combined area, by bringing benefits to persons using those services, or reduce or limit traffic congestion, noise or air pollution.

Aside from this, any facility which fits into this description can be included if the local transport authority considers that it 'will contribute to the implementation of their local transport policies' (section 114(1)). The local transport authority may wish to include facilities that are outside its own powers to deliver, in which case it must secure this delivery through appropriate contractual or other arrangements outside the QPS. It will be particularly important to consider the role of the highway, traffic, planning and enforcement authorities if these powers are not coincident with the local transport authority. These considerations have been developed at greater length in the body of this guidance.

The following checklist identifies examples of 'facilities' that a local transport authority may want to consider as part of a QPS. Whilst the following checklist refers to the ability of a local highway authority (LHA) to make provision for inclusion of items in a QPS, in all cases where a trunk road is included in the QPS the Scheme will need to be made jointly with the Secretary of State (see section 10 of this Guidance).

Among the facilities that are excluded from consideration are those to be provided under section 139 or section 140 of the 2000 Act. These are excluded by s114(5)(b) of the 2000 Act. However, a QPS may include as a facility an information service to the extent that it provides information additional to the requirements of sections 139 or 140. It is important to note that none of the following are mandatory (other than the need to specify facilities), nor is the checklist intended to be exhaustive.

Examples of "Facilities" which might be included in a QPS

Facility	Notes
Main carriageway (bus facilities)	
Bus lanes and other priority lanes catering for buses	<i>There is only a duty to provide Facilities as specified in the Scheme. The Scheme may include facilities that are only available at certain times in the day or week. For example, a bus lane will only be in operation, and hence enforceable, at the times specified in the TRO. The Scheme should clearly set out any such restrictions on the time of operation</i>
Bus stop clearways	
Bus access only restrictions - bus gates	
Bus only turning restrictions	
Parking, waiting and loading restrictions and parking management	
Guideways and tracking devices for buses	
Traffic signal-based vehicle detectors	
Enforcement equipment	
Specified Signal and Pedestrian Facilities	
Specified Boarding Facilities	
Urban Traffic Control (UTC) Priority Works	
Clearways	
Improved Lighting / Security Measures	

Footway (bus passenger facilities)	
Shelters/stops - including seating, lighting, security, information*, communication, litter management, ticket machines, clearways	<i>Only where provided by LHA/LTA either directly or through third party contract.</i>
Raised kerbs and boarders	
Bus Stop environment - lighting, security, crossing facilities, local pedestrian routes, surface treatment/paving	
Off-highway	
Bus stations Stand allocations Passenger facilities Staff facilities Layover provision	<i>Can be included as long as these services can be secured by the LTA for the duration of the QPS. Depends on ownership of bus station, private highway etc.</i>
Private highway access - including retail parks, airports and interchanges, hospitals, park & ride sites	
Turning areas for buses (outside public highway)	
Parking space for buses (for layover)	
Marketing & information*	
Information based facilities**	
Real time/schedule adherence facilities Infrastructure - systems, displays, communications links On vehicle equipment, including funding Software Remote passenger access - web and phone based	<i>These might be included as a facility to the extent that they help to facilitate benefits on the routes served, e.g. electronic information boards at bus stops to show passengers how far away the buses are. If they only serve passengers on the buses themselves it might be more appropriate to include them as part of the service to be provided by operators.</i>
Printed displays at passenger facilities	
Branding materials - concept, area, corridor	
Timetable Information (bus guides)	
Interchange point signing	
Ticketing distribution and promotion	

Support packages	
Enforcement Actions in support of QPS specified Facilities	<i>Needs prior contractual agreement if enforceable by a third party.</i>
Parking and Waiting Controls; other TRO enforcement	<i>Needs prior contractual agreement if enforceable by a third party.</i>
Interchange point signing	
Facility maintenance and cleaning service	<i>Can be included as long as these services can be secured by the LHA and/or LTA for the duration of the QPS i.e. will require contractual arrangement with facility provider, if a third party</i>

* NB: this may be better delivered through a S139 determination.

** Only eligible where facilities are additional to the requirements in sections 139 and 140 of the 2000 Act to provide local bus information about bus services.

ANNEX B: Standard of Services

The QPS needs to specify the 'standard of services' required from operators providing services that may make use of the facilities provided under the scheme. As explained in the guidance, different standards of services might be applied in relation to different facilities, different routes or services, or different days or times of day.

A checklist of potentially eligible 'standard of services' features is set out below. It is important to note that none of the following are mandatory (other than the need to specify a standard of services), nor is the checklist intended to be exhaustive.

Examples of "standards of services" which might be included in a QPS

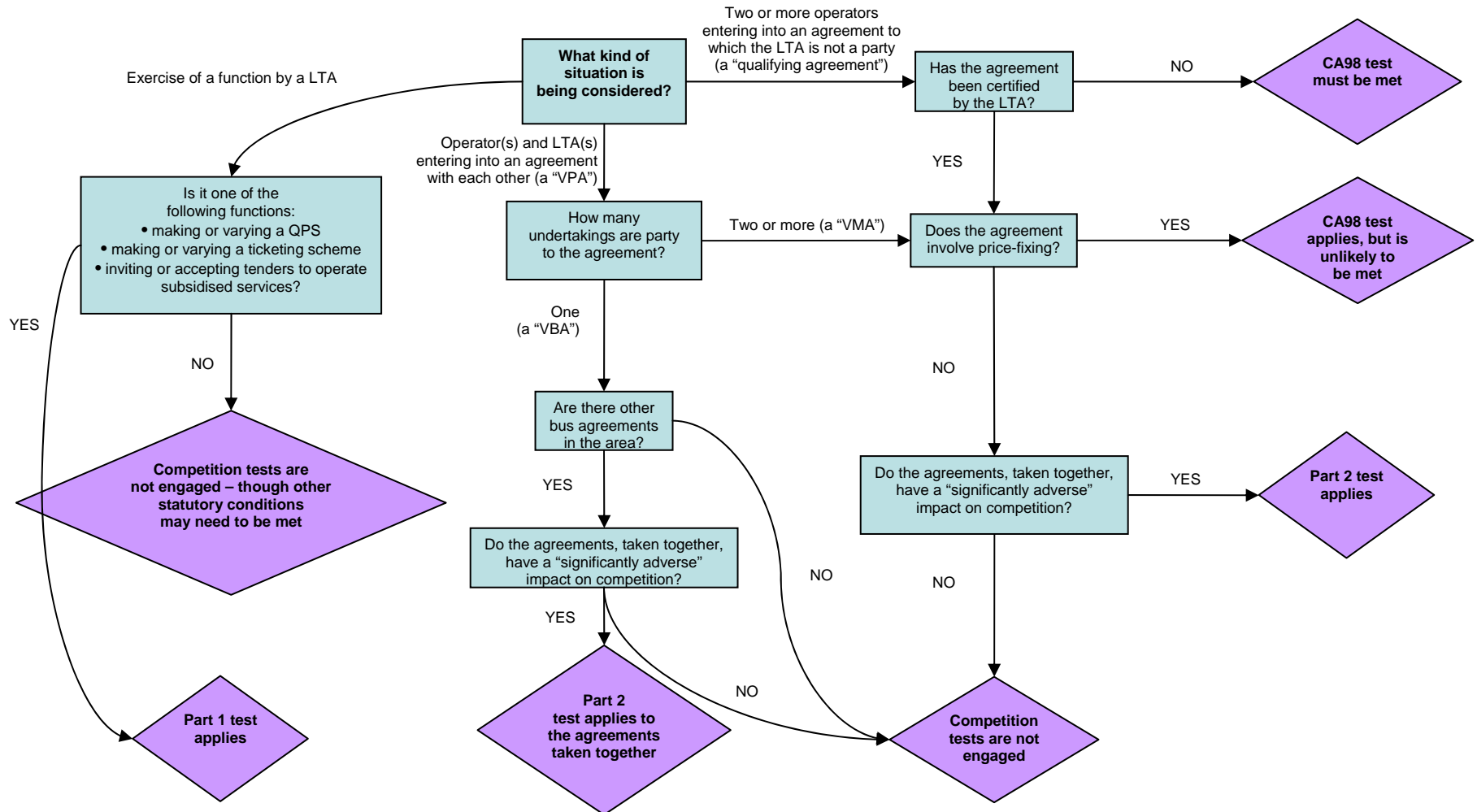
Standard of Service	Notes
Vehicle	
Design characteristics	<i>With legal advice to ensure such specification is not anti-competitive</i>
Accessibility	
Provision of sufficient vehicle capacity for anticipated demand	
Buses to meet standards specified under the Disability Discrimination Act 1995	<i>For example, could be specified as % at start, % in 1 yr etc.</i>
Passenger facilities - seating, security, lighting, luggage space	
Emissions & noise	<i>For example, targets could be specified as % to Euro x/% to maximum y dB (A) at start, % to Euro x/% to maximum y dB(A) in 1 yr etc.</i>
Information to be displayed on vehicle	
Quality Partnership Scheme branding	<i>Need to take full account of operator branding.</i>
On vehicle AVL (Automatic Vehicle Location) equipment & transponder devices	

Timetabling	
Service frequencies	<i>But only where there are no “admissible objections” from “relevant operators”</i>
Service timings	
Driver and other staff	
Training and qualifications	
Development, behaviour, disciplinary code	
Uniform and appearance	
Relevant accident record	
Customer care package	
Performance in delivery	
Punctuality, Reliability, excess wait time	<p><i>- Though not penalties, as these are in the remit of the Traffic Commissioner.</i></p> <p><i>- A time-based - e.g. peak/off-peak - differential may be appropriate</i></p>
Customer satisfaction monitoring including mystery shopper	
Vehicle appearance - internal and external cleaning	
Vehicle breakdown rate	
Delivery against customer service agreement	
Adherence to service standard	
Customer care	
Required effort to enforce no-smoking policy	
Information on how to access customer services	
Agreed protocol / adherence to Charter / standards for customer service	
Customer comment/complaints procedure	
Customer code of behaviour and implementation plan	
Service stability (service stability code of conduct)	
Passenger notification period for service and fares changes	
Staff presence (supervisory and customer care)	

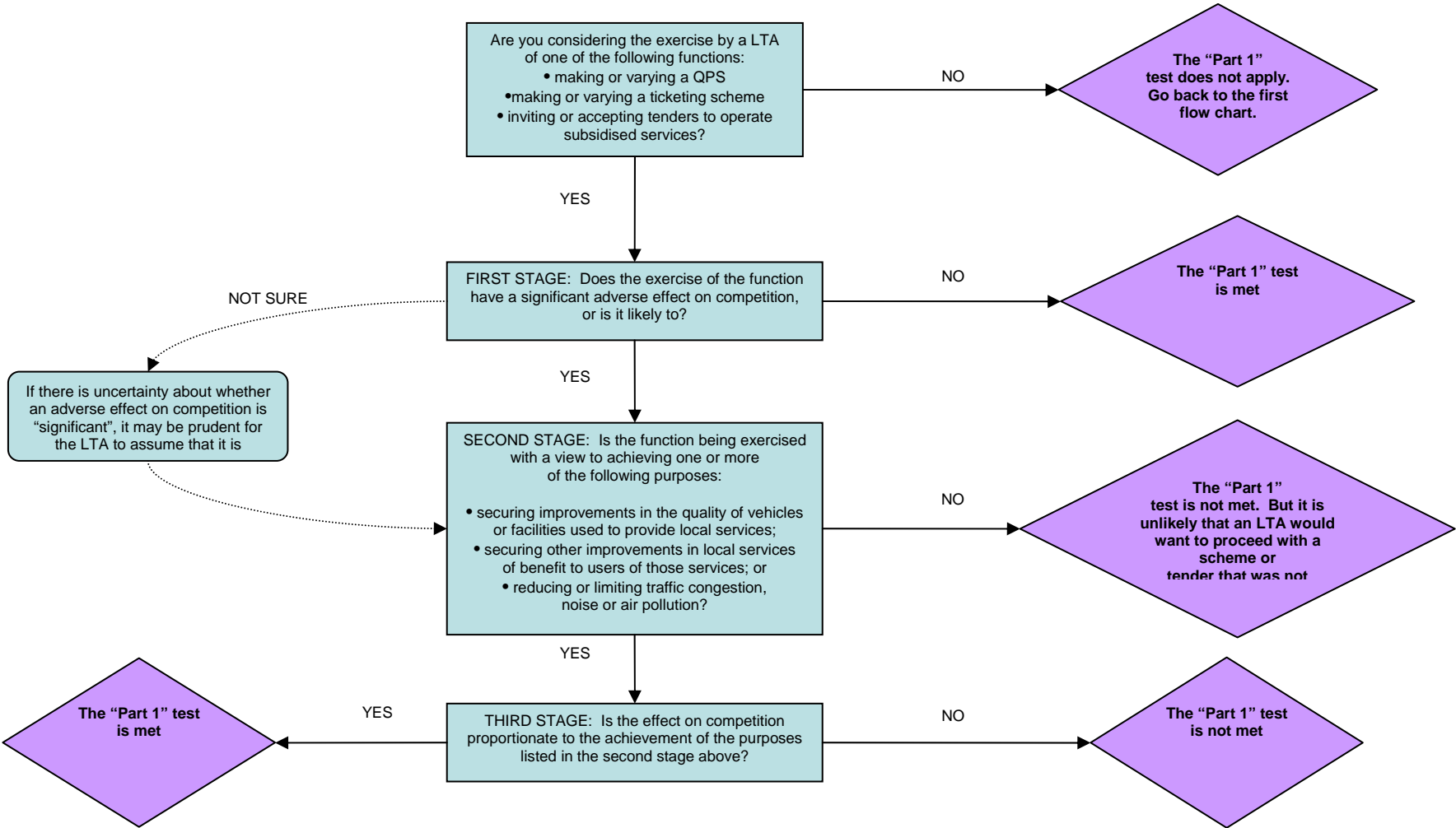
Fares and ticketing	
Maximum fares	<i>But only where there are no “admissible objections” from “relevant operators”</i>
Equipment and systems characteristics	
Provision of information on ticketing to Local Authority	
Data	<i>So long as relevant to standard of service perceived by customer</i>
Aggregate patronage data for QPS services	
Supply of performance data - format, summaries and timeliness	<i>Subject to data sharing agreement</i>
Audit arrangements relating to performance	
Miscellaneous	
Specification of excluded services	

ANNEX C – COMPETITION TESTS THAT MAY BE RELEVANT IN CONNECTION WITH QUALITY PARTNERHIP SCHEMES AND RELATED VOLUNTARY AGREEMENTS

The following summary flow charts, which also appear in the Office of Fair Trading’s guidance on the application of competition law in the bus market, provide a helpful overview of the competition tests that might apply in connection with a QPS.



The "Part 1" test



The "Part 2" test

