

**EXPLANATORY MEMORANDUM TO  
THE ADVANCED QUALITY PARTNERSHIP SCHEMES (ENGLAND)  
REGULATIONS 2018**

**2018 No. 21**

**AND**

**THE ADVANCED QUALITY PARTNERSHIP SCHEMES (EXISTING FACILITIES)  
(ENGLAND) REGULATIONS 2018**

**2018 No. 22**

**1. Introduction**

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

**2. Purpose of the instrument**

2.1 The Advanced Quality Partnership Schemes (England) Regulations 2018 set out the processes by which bus operators can object to elements of a local transport authority's (LTA) proposals for an Advanced Quality Partnership Scheme (AQPS). The Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018 place some limitations on the facilities that an LTA can provide as part of an AQPS.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As these instruments are subject to negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 These instruments are being made to bring about the full implementation of the provisions in the Bus Services Act 2017 relating to AQPS so that LTAs can make an AQPS. The Bus Services Act 2017 amends the Transport Act 2000 to provide various tools, including AQPS, to enable LTAs in partnership with bus operators to improve services in their areas. Section 1 of the Bus Services Act 2017 inserted new sections 113C to 113O in Part 2 of the Transport Act 2000 to provide powers for LTAs to create AQPSs. This is the first exercise of the new regulation-making powers.

4.2 Section 113K – this make provision similar to that found in section 119 of the Transport Act 2000 relating to Quality Partnership Schemes (QPS) (an existing bus service improvement tool) so that Secretary of State may make regulations, applying

to England only, about the specifying in an AQPS of facilities that were already being provided before the new AQPS is proposed.

- 4.3 Section 113N – this makes provision similar to that found in section 122 of the Transport Act 2000 relating to QPS so that Secretary of State may make regulations applying to England only about, for example, procedures for making, varying or revoking AQPSs and also regulations about how they operate, conditions to be complied with, notice periods, inquiries and objections.
- 4.4 The Bus Services Act 2017 makes provision for existing QPS in England (apart from those that cross the England and Wales border) to automatically become AQPS on 27th June 2017. There were already 19 QPS in England, e.g. Birmingham since July 2012, and Nottingham since 2010.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of these instruments is England.

## **6. European Convention on Human Rights**

- 6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The bus market in England outside London has been deregulated since 1986. However the long term decline in bus usage from its peak in the 1950s has continued under the deregulated system. Some bus markets outside London experience various problems, such as a lack of competition, high fares and communities not benefitting fully from the social and environmental benefits that buses can bring.
- 7.2 Against this background the Bus Services Act 2017 and the regulations made under that Act are necessary in order to provide LTAs with a wide set of tools to use to address local market inefficiencies and failures. These tools will enable LTAs to work in partnership with commercial bus operators to provide better local bus services for passengers and will help LTAs deliver the policies set out in their local transport plans. The Department concluded that alternatives to legislation, such as voluntary partnerships, would not achieve the policy aims as they would provide inadequate safeguards against the consequences of one or more parties failing to fulfil their obligations.
- 7.3 The Bus Services Act 2017 leaves it to LTAs to decide which of the tools in that Act should be used. LTAs are encouraged to pursue the most suitable solution for their area, but are directed to Departmental guidance to which they must have regard.
- 7.4 AQPS are one of the tools created by the Bus Services Act 2017. They are designed to bring about partnership arrangements between LTAs and bus operators to improve services. They are similar to the existing QPS, which will now only exist in Wales and in cross-border schemes. Unfortunately fewer authorities than expected have introduced QPS due, for example, to concerns about the costs of providing facilities and infrastructure (e.g. new bus stops or shelters) which is a prerequisite for establishing a QPS. Also it was felt by stakeholders that providing facilities and

infrastructure may not be the appropriate solution to issues with bus services in every area. So the new provisions in Part 2 of the Transport Act 2000 and the Advanced Quality Partnership Schemes (England) Regulations 2018 seek to address some of these issues in order to encourage take-up by authorities and operators of partnerships. For example:

- (a) It is not a requirement for AQPS that LTAs provide facilities as part of an AQPS. This will provide further flexibility, so that, for example, an AQPS is not prevented by the LTA not having financial resources to spend on providing or upgrading those facilities.
- (b) LTAs can undertake measures (for example reduced car parking provision or increased parking charges) as well as, or instead of, providing facilities as part of an AQPS. Both the provision of facilities and/or taking of measures are intended to make bus usage more attractive and increase patronage. It is expected that this will improve take-up and operator satisfaction with AQPS.
- (c) Section 113E(7) and (8) of the Transport Act 2000 sets out an admissible objection mechanism by which an AQPS can only include a requirement as to standards of service to be provided by the operator if there are no admissible objections from relevant operators. It is hoped that as a result of the admissible objection mechanism in AQPS also including objections to requirements about vehicles, which wasn't the case with QPS, and objections to requirements about the ways in which passengers may pay for journeys, there will be a greater acceptance of AQPS by operators. This is because operators will be able to object if authorities offer a meagre package of facilities and/or measures in return for imposing stretching requirements on operators about, for example, vehicles or methods of paying for journeys. The Advanced Quality Partnership Schemes (England) Regulations 2018 define the terms "relevant operator" and "admissible objection" for the purposes of the improved objection mechanism. An objection is admissible if it would not be practicable or commercially viable for the operator to provide the bus services to the required standard.

7.5 Advanced Quality Partnership Schemes (England) Regulations 2018 then go on to set out the detail of the procedure that an operator must follow if it objects to a requirement in an AQPS. It is possible for an operator to withdraw an objection at any point before the LTA makes a decision in regard to it. It is envisaged that LTAs and operators will work together to resolve most problems, but a mechanism is provided by which the matter can be referred to a traffic commissioner. The regulations also provide for reviews of requirements in AQPS as to frequencies or timings of services and maximum fares as market conditions may change over time. Operators will be able to make objections to the outcomes of such reviews. It is hoped that these mechanisms will also encourage adoption of AQPS and greater partnership working.

7.6 The new provisions in Part 2 of the Transport Act 2000 and the Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018 deal with another issue in order to help boost adoption of AQPS compared to adoption of QPS. Under the Quality Partnership Schemes (Existing Facilities) Regulations 2001, S.I. No. 3317, an LTA can include in a QPS any facilities that were provided within the five year period up to the date of notice of proposal to make a QPS. LTAs can also include facilities between five and ten years old, if operators using the facilities do not put in an admissible objection. But LTAs cannot include facilities in a QPS which are more than ten years old, even if an operator does not object to their inclusion and the

facilities are of a reasonable standard. This policy may have acted as a barrier to adoption of QPS.

- 7.7 Therefore under the Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018 there is no upper age limit for existing facilities. These regulations still allow local bus operators to object to the inclusion in an AQPS of any facilities provided more than five years before notice of the proposed AQPS is given. If the operator does not withdraw the objection, the AQPS cannot be made with that facility included. The LTA must remove it from the AQPS before making the AQPS. If the operator withdraws the objection because it is satisfied with the improvements made to the facility, the AQPS can be made with that facility included. It is hoped that these provisions will encourage AQPS based around older infrastructure to be made.

### ***Consolidation***

- 7.8 The Advanced Quality Partnership Schemes (England) Regulations 2018 make minor consequential amendments to regulations relating to traffic commissioners, i.e. the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, S.I. No. 1629, and the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009, S.I. No. 443. The Department does not intend to consolidate those regulations.

## **8. Consultation outcome**

- 8.1 A six-week consultation exercise was held, between 8th February and 21st March 2017 to gather opinions on these regulations. The consultation sought views from a wide range of bodies, including the bus industry, local authorities and passenger representatives. This was supplemented by three half-day workshops to enable key stakeholders to ask questions about the regulations before responding to the consultation. 47 responses on these regulations were received, a response rate of 67%.
- 8.2 45 respondents supported the proposal to allow an LTA to include in an AQPS any facilities that are more than five years old if no operator objects. Some additional comments said that operator consent to include facilities that are more than five years old was unnecessary and that they should be included if they are in good working order, or that the five year period should be extended. Others commented that the Bus Services Act 2017 Act should require facilities to be ‘fit for purpose’ or meet quality standards and that the operator’s own facilities should be included in the scope of an AQPS.
- 8.3 The Department wants to strike the correct balance between LTAs wishing to include facilities as part of AQPS and ensuring that these facilities offer a fair contribution to the overall AQPS package. Operators can still object if they do not agree that individual existing facilities that the LTA proposes to include in the AQPS should be included. For these reasons, the Department decided to implement the proposal without modification and exclude the upper limit of ten years for existing facilities in AQPS.
- 8.4 The Department’s consultation on the draft regulations and guidance, the responses received to the consultation and the changes made as a result are all available from: <https://www.gov.uk/government/consultations/bus-services-bill-draft-regulations-and-guidance>

## **9. Guidance**

- 9.1 The Secretary of State has issued guidance under section 113O of the Transport Act 2000 concerning AQPS to which these Regulations relate. The guidance is available from the Department for Transport's website at:  
<https://www.gov.uk/government/collections/bus-services-bill-overview>

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is not significant. Indicative analysis for an illustrative level of take-up shows that there will be costs to operators from administering an AQPS, estimated to be £0.5m-£1m over ten years. Benefits to operators from increased patronage are estimated to be £2.5 million-£5.1 million over ten years. These cost/benefit estimates are based on an illustrative scenario of five rural local authorities taking up AQPS.
- 10.2 The impact on the public sector is not significant. The impact of AQPS on the public sector is dependent on the number of LTAs adopting AQPS, and on the specific model of AQPS that each LTA adopts. However, in either case, it is likely to be minimal. LTAs are expected to face implementation costs, estimated to be £0.1m over ten years. Also there is an estimated reduction in public account revenue due to reduced car mileage of £0.3m over ten years (we estimate some journeys currently undertaken by car will be undertaken by bus).
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website. This Impact Assessment is the one that was prepared to accompany the Bus Services Act 2017. It was updated to take account of any additional impacts of these regulations, and can be found at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589730/bus-services-bill-ia-for-regulations-secodary-legislation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589730/bus-services-bill-ia-for-regulations-secodary-legislation.pdf)

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise the impact on small businesses. This is because it is important that all affected operators, regardless of size, are able to make objections to requirements included in standards of service expected of them, and also to make objections to the inclusion in AQPS of older existing facilities.

## **12. Monitoring & review**

- 12.1 Jesse Norman, Parliamentary Under Secretary of State for Transport, has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.
- 12.2 "Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Advanced Quality Partnership Schemes (England) Regulations 2018 or the Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018. A review of these regulations would be disproportionate, taking into account the economic impact of the regulations on the activities of bus operators, and would be undesirable for the particular policy reasons set out below."

- 12.3 AQPS are intended to be based around partnership working between LTAs and operators. They are tools available to a LTA to use to improve bus services in its area if it chooses to do so. Therefore the Department does not know how many AQPS will be created. There are currently 19 QPS in England. Also before an AQPS can be made a LTA must, under section 113G of the Transport Act 2000, conduct a consultation involving operators of local services. In addition the LTA must in its notice of the proposed AQPS set out full details of its plans for consulting on how well the AQPS is working once it is up and running. AQPS are not time limited and may exist for many years or even decades. A provision for regular five yearly review of the regulations underpinning AQPS would be resource intensive and time consuming for the Department, LTAs and operators as information and data would have to be gathered regularly from many different bodies throughout England and then assessed by Departmental policy experts and analysts, with reports setting out the conclusions of the review having to be produced.
- 12.4 Also the regulations themselves contain mechanisms for review that apply once an AQPS is in operation. For example the requirements in the AQPS on operators as to frequencies or timings of services can be reviewed by the LTA if it considers that there has been a change in market conditions which materially affects the ability of operators to secure an appropriate rate of return. In addition at any time after the AQPS has been in operation for 12 months operators can request a review of requirements as to frequencies or timings, provided a sufficient number do so. Finally the regulations contain a review mechanism under which the LTA must review requirements on operators as to maximum fares within a specified period of time, which cannot be more than 12 months from the time the AQPS came into operation or 12 months from the date of the last review. This period must be specified in the AQPS. For these reasons a review provision would be disproportionate.
- 12.5 Furthermore regularly reviewing the regulations would adversely affect the achievement of the policy objective of securing LTAs' and operators' long term commitment to AQPS in their areas. For example LTAs may hesitate to enter into a long term financial commitment around infrastructure in an AQPS if they felt that every five years there was a high degree of uncertainty over the future of the AQPS system. For the same reason operators might be reluctant to enter into financial commitments around, for example, new or improved vehicles. This might result in AQPS not being adopted at all or AQPS being adopted with a much less ambitious scope and consequently a smaller benefit being realised for local bus services.

### **13. Contact**

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