

TECHNICAL NOTE

DATE:	24 May 2021	CONFIDENTIALITY:	Public
SUBJECT:	National Bus Strategy: Enhanced Partnerships and Franchising from July 2021		
PROJECT:	70085190 Dorset Council Bus Back Better	AUTHOR:	M Gallagher
CHECKED:	J Moss	APPROVED:	M Holmes

NATIONAL BUS STRATEGY: ENHANCED PARTNERSHIPS AND FRANCHISING FROM JULY 2021

Purpose of note

The purpose of this technical note is to set out the required actions by Local Transport Authorities (LTAs) to establish an Enhanced Partnership or commence the process of franchising for local bus services in their area, as required by Bus Back Better, the new national bus strategy. The note gives a background to the changes, explains the key differences between the two mechanisms and recommends that the statutory process to establish an Enhanced Partnership is instigated. The note details the necessary next steps for LTAs to follow in order to meet the challenging timescales required by the national strategy.

Background

On 15 March 2021 Government launched Bus Back Better, a new national bus strategy for England outside London. It aims to rejuvenate local bus services, making them attractive for passengers, cheaper, easier to understand and use, faster and more reliable, and greener. It acknowledges the decades-long decline in bus patronage nationally – and points to towns and cities which have bucked the trend, increasing passenger numbers with coordinated services and investment.

Bus Back Better is the most significant change for local bus services in England (outside London) since deregulation in 1986. Much greater emphasis will now be placed on partnership working, where LTAs and bus operators form Statutory Partnerships to define bus networks, service levels and fares strategies. The government expects all LTAs to develop Bus Service Improvement Plans (BSIPs) and set up Enhanced Partnerships (EPs), as defined in the Bus Services Act 2017. LTAs can also choose to start developing a fully franchised network, if they prefer, alongside their EP. Key milestones for LTAs are:

- **By the end of June 2021:** Commit to bringing in one or more Enhanced Partnerships or be working towards franchising;
- **By the end of October 2021:** Develop and agree a Bus Service Improvement Plan with bus operators and other stakeholders; and
- **By April 2022:** Introduce Enhanced Partnership(s).

Failing to commit to and then introduce Enhanced Partnerships (except where the LTA has already started the statutory process to introduce franchising) will put at risk the LTA's government funding and will exclude bus operators from Coronavirus Bus Services Support Grant Restart funding support.





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Enhanced Partnerships and Franchising

In order to meet the requirements of the national bus strategy, LTAs are required to establish an Enhanced Partnership or commence the process for franchising. If an LTA opts to pursue franchising it will still be required to establish an EP as an interim measure.

ENHANCED PARTNERSHIPS

An Enhanced Partnership (EP) is an agreement between a local authority and the majority of their local bus operators to work together to improve local bus services. It requires an agreed 'vision' of improvements that the EP is aiming to achieve and corresponding actions to achieve them. EPs are intended to be flexible in their scope and scale. It is possible for an EP to be formed of more than one local authority, and this is encouraged by the national bus strategy where the local bus market significantly overlaps with a neighbouring authority, for example a small unitary authority surrounded by a larger county.

LTAs must consult with affected operators and secure a majority agreement. There is no requirement for LTAs to provide infrastructure or some other enhancement requiring capital investment, but LTAs are expected to work collaboratively with bus operators through the partnership to bring about improvements for passengers. There are five main aspects which an EP can cover. These are: the vehicles used to operate bus services, including their appearance (livery); provision of bus service information to the public; the dates on which timetables may be changed; ticketing; and arrangements to facilitate the scheme.

Once established, an EP covers **all** registered local bus services with at least one stop in the area. Exempt services not covered by an EP are: subsidised bus services operating on a gross cost basis (where the LTA retains the revenue); community bus services operating under Section 22 permits; services where 10% or less of the overall distance is registered as a local bus service (such as scheduled coach services); and services classed as excursions and tours. However, operators of these services may choose to participate in an EP voluntarily.

As EPs are intended to be flexible, it is up to the LTA and operators to agree what should be included. This includes the overall vision, objectives, vehicle standards, ticketing arrangements, and any aspects which are to remain under the sole commercial control of the operators, such as their own tickets and products. Once established, operators run services and are able to enter or exit the local bus market in much the same way as at present, with ongoing monitoring and evaluation overseen by a partnership board.

With the flexibility of an EP comes an expectation that results will be achieved through shared goals, collaboration, genuine partnership and good faith. Enforcement of the EP is through service registration mechanisms available to the Traffic Commissioner (or the LTA where it has taken on responsibilities for service registration) which could include cancelling registrations or fines.



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Operators wishing to take action against an LTA for failing to uphold their side of the agreement can do so through the courts and ultimately an operator could choose to withdraw from an EP, although this would mean they would no longer be entitled to receive any discretionary funding such as the Coronavirus Bus Services Support Grant.

The national bus strategy is very ambitious and potentially radical. Enhanced Partnerships are identified as the preferred mechanism within which to work towards these ambitions, and Government's expectation is that EPs should be developed with a wide scope, pushing at the limits of the level of LTA influence and operator cooperation permitted under the Bus Services Act 2017 and competition law. If new EPs meet the ambitions of the national strategy, they will go far beyond the examples in the DfT EP guidance.

Enhanced Partnerships – Key Points:

A statutory partnership covering all registered local bus services in the area, developed in agreement with a majority of the area's operators and applying to all operators once established.

Requires a shared vision, objectives and agreement of the main aspects the partnership is expected to cover, most typically being around vehicle standards, service information, dates of service changes, ticketing and governance arrangements.

Overseen by a partnership board with monitoring and evaluation of partnership objectives.

Emphasis on partnership, best efforts and good faith to achieve results, with enforcement exercised as a last resort.

FRANCHISING

Franchising enables an LTA to specify all aspects of bus services running in the area, including routes, timetables, fares, ticketing and vehicle specifications. It is an established model used for bus services in London and many cities and regions around the world. In a franchised operation, on-street competition between operators for passengers is not permitted and no operator is allowed to run their own commercial service within the franchised area.

Franchising powers are automatically available to Mayoral Combined Authorities; other authorities wishing to establish franchising must seek approval from the Secretary of State. Since the Bus Services Act came into force no Mayoral city region has yet introduced bus franchising, although the Greater Manchester Combined Authority recently committed to establishing franchising in its area.

Franchising involves less prescriptive bureaucracy than the previous Quality Contracts powers, including an improved process for accounting for cross-boundary services, and replaces the need to pass Public Interest Criteria tests and satisfy a QCS Board with independent scrutiny of whether the information used by the LTA and its analysis of this information is of sufficient quality and adheres to guidance.

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However, as franchising gives local authorities the most control, and consequently strips bus operators of most of their commercial freedoms, it is still the most complicated option available under the Bus Services Act.

LTA's would take on the full cost of scheme preparation whereas, under an EP, preparation could be shared with operators and overall costs would be lower than a franchise because the LTA would not have to devote the same level of analysis to appraising financial risk.

Similarly, whereas an LTA would be required to take some (or all) revenue risk under a franchise, it is likely that operators would retain most (or all) revenue risk under an EP. However, an EP may not be able to deliver an LTA's bus strategy in full, in which case reduced delivery under an EP would need to be weighed up relative to improved delivery but increased costs and risk under a franchise.

Further risks that would need to be accounted for under a franchise include the treatment of TUPE and pension liabilities, potential 'stranded assets', and the potential for transitional risks, if operators chose to reduce commercial operations in the period leading up to the commencement of franchised operations.

The area to be covered by a franchise can be drawn up to meet local requirements, ranging from covering multiple LTA areas, through a single LTA area, to a smaller subsection of the LTA area, or even a single corridor. However, when defining the area to be covered, attention will be required as to whether the bus routes affected would be fully contained within the area. While the 2017 Act allows LTAs to award service permits to routes that cross into franchised areas, such that they can continue to be operated on a commercial basis, such permits can only be granted where:

- the service will benefit passengers in the area; and
- it will not have an adverse effect on other services that are provided under the franchising scheme.¹

Although neither of these criteria should cause concern in the context of an appropriately defined franchise area, it should be noted that a very tightly defined corridor-based franchise would require consideration of how town and city centres are to be treated. For example, if central areas are to be included in a corridor-based franchise, this could result in many services that use central area bus stops but are not otherwise part of the corridor in question requiring service permits.

Conversely, if the franchise area was defined to omit the central area to avoid this issue, it could result in most of the services in the corridor becoming cross-boundary services, which may require them to be issued with service permits rather than be included in the franchise.

¹ <http://www.legislation.gov.uk/uk/si/2018/423/made>

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Franchising – Key Points:

Covers every aspect of local bus services in the area, from routes and timetables to tickets, fares, vehicles, branding and enforcement of service standards.

LTA takes on full responsibility for network planning and carries most of the revenue risk.

Bus operators' commercial involvement in network planning ceases, with their role reduced to that of contractors supplying buses and drivers to run services on the LTA's behalf.

Powers to franchise available automatically to Mayoral Combined Authorities; will be considered upon application to the Secretary of State for other Local Transport Authorities.

DfT guidance² on the powers in the Bus Services Act points out that many of the same benefits of franchising can be achieved through Enhanced Partnerships more quickly and at lower cost. The national bus strategy makes clear that most LTAs are expected to opt for an EP unless they have made significant progress towards establishing franchising, such as in Greater Manchester.

A high-level comparison of some of the key differences between EPs and franchising is given in the following table:

² Bus Services Act 2017: New powers and opportunities <https://www.gov.uk/government/publications/bus-services-act-2017-new-powers-and-opportunities>

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Table 1 – EP and Franchise key differences

	EP	Franchise
Legal basis	Legal agreement; must be agreed by LTA and operator majority	Network / area / route franchises
Who's involved	All operators in area	Operators who win franchises
Network design	Operators and LTA working together	LTA
Registrations	Traffic Commissioner or LTA	LTA
Infrastructure	Not mandated, but likely to include improvements	LTA makes improvements
Ticketing	Multi-operator schemes; operators own tickets/ fares also required	LTA determines all fares
Timetables	Operators and LTA working together; scope to agree min/max frequency	LTA sets timetables
Enforcement	Traffic Commissioner; LTA (where responsible for registration); courts	Contract management
Time to implement	6 months	At least 2 years

Given the greater complexity in establishing a franchise, WSP recommend that Dorset Council commence the process of establishing an Enhanced Partnership.

Process for establishing an Enhanced Partnership

The process for establishing an EP is set down in existing guidance accompanying the Bus Services Act and specifies that the steps are:

- Informal discussion between LTA, operators and stakeholders
- Formal discussion and negotiation between LTA, operators and stakeholders
- Preparation of EP documentation
- Notice of Intention and operator objection period
- Stakeholder consultation
- Enacting the EP



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INFORMAL DISCUSSION

Before embarking on the formal processes, LTAs are expected to hold informal discussions with operators, as well as seek views from other stakeholders such as neighbouring authorities, community transport providers, passenger groups and business representatives. In these informal discussions, the LTA and operators should consider what they would want to achieve through an EP and the extent to which an EP could help in the delivery of their respective organisational objectives. Discussions at this stage should be high level, considering the geographical scope of an EP and any major obstacles or challenges foreseen. There is no obligation to agree anything at this stage, with the intention being simply to get the parties engaged and thinking about what an EP could achieve. Discussion with neighbouring authorities should take place in all cases, and particularly where there is a significant overlap of the bus network, for example a small unitary surrounded by a larger county.

These early informal discussions are vital, as they allow authorities and operators to form a view on what is likely to be collectively deliverable under an EP within an informal environment and before any commitment is made to an EP. **In the case of Dorset, we need to establish whether this is considered to have taken place, or whether these discussions need arranging.**

FORMAL DISCUSSION

Once the informal discussions have taken place to scope out the potential geographical area of an EP, the formal processes can begin. **It is vital that formal notice is given to all operators in the form of a Notice of Intent and Invitation to Participate before formal discussions on the details of an EP commence, and this is required by the end of June 2021.**

As per the requirements of the national bus strategy, the entirety of an LTA's area must be covered by one or more EPs and therefore if an LTA is unsure on which EP(s) a particular locality will fall under, it should give notice of an EP covering the whole of their area. The Notice of Intent is only the first step to commence the formal discussions and the exact area covered by the EP can be changed after the notice is issued.

Once notice has been given and invitations to participate have been issued, formal discussions between authorities and local bus service operators can commence. These discussions will build and expand upon the informal discussions and enable the parties to form a view of what improvements could or should be delivered through an EP. The discussions should acknowledge that many of the service standards imposed by an EP will be paid for by operators who will be seeking to ensure that any EP proposal will deliver tangible benefits to those businesses that would justify their future investment. Other stakeholders such as passenger groups should also be involved at this stage to ensure that the EP package that goes forward to the next stage is likely to deliver the outcomes that are expected.



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To take forward the formal discussions towards delivery of a county-wide EP, a project board made up of the LTA and bus operators should be appointed. This could also include representatives of passenger groups, local businesses, the Local Enterprise Partnership and local authorities whose areas would neighbour any proposed scheme. Only the operators and authority will be able to determine whether the EP goes forward, but this does not prevent others on the board from contributing to the development of the proposals.

PREPARING AN EP PLAN

Once authorities and relevant bus operators have held formal discussions on the proposed content of an EP, the next step is to draft the formal documentation. This comprises the EP Plan which gives the high level vision and objectives for bus services in the local area; and one or more EP Schemes which set out the detail of how the vision and objectives will be achieved, including any commitments made by the local authority or standards to be met by bus operators.

The EP Plan is the high-level strategic document that sets the bus network in the EP area into context and there are a number of specific things that the plan must cover. These include the geographical area of the EP; the objectives of the plan; what policies regarding local bus services will be pursued in the EP; the intended effect of the EP Scheme and the authority's plans for consulting passenger groups on how well the plan and scheme(s) are working.

An EP Plan must always have one or more related EP Schemes. An EP Scheme sets out requirements in relation to local bus services and the type of interventions likely to be needed to deliver some or all of the policies and objectives in the EP Plan. It is important to emphasise that these elements must be formally agreed by both the LTA and the majority of bus operators in the area, sufficient to pass through the operator objection mechanism. An EP Scheme does not have to contain commitments by the LTA, but it is unlikely that it will receive support from a sufficient proportion of operators unless it does so. Typically, these commitments will include 'facilities' such as new or improved bus stops, or on-street bus priority, and 'measures' such as changes to parking management, coordination of roadworks, marketing campaigns and so on.

In preparing the documentation for an EP Plan, LTAs should give due consideration to small operators that would be affected by the proposal. Small operators may be disadvantaged if they do not have adequate resources to engage in all aspects of developing the scheme. LTAs should discuss issues that make impact small operators at an early stage of developing such proposals and where necessary make adjustments to ensure they are not excessively burdened.



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NOTICE OF INTENTION AND OPERATION OBJECTION PERIOD

Once the draft EP Plan and Scheme(s) have been prepared, the next stage is to make all relevant local operators aware of the full details of what is being proposed in the draft Plan and Scheme(s) so that they can provide input before it is finalised. A notice that a Plan and Scheme(s) have been prepared should be sent to all operators of in-scope local services. The notice must contain full details of the Plan and Scheme(s) and explain that operators have a right to object to the plan within a period of 28 days.

The authority must publish the names of operators making any objections within 14 days of the last day of the period during which objections can be made. If no more than 25% of operators object to the proposed EP, the proposals can move to consultation.

CONSULTATION

Assuming that the EP Plan and Scheme(s) successfully pass the objection stage, the next stage is a formal consultation exercise. It is for the LTA to carry out the formal consultation exercise and when doing so they must include a number of statutory consultees. These include operators, passengers' representative organisations such as Bus Users, other LTAs that would be affected by the proposals, the Traffic Commissioners and the chief officer of police for each area to which the plan relates, Transport Focus and the Competition and Markets Authority (CMA). There is no requirement for general public consultation, this is recommended where service changes or new facilities as a result of the EP are planned.

MAKING THE EP PLAN

Once the consultation exercise has completed and the responses have been analysed and any changes made, the LTA must decide whether to 'make' the Plan and Scheme(s). The LTA should discuss with operators any changes proposed following consultation so that agreement can be reached on what the final form of the plan and scheme will be, bearing in mind that any changes to the Plan and Scheme(s) as a result of the consultation exercise will trigger the 28 day operator objection period to be re-run.

Following consultation and the re-run of the 28 day objection period (if required due to change made after consultation) the LTA can then make the Plan and Scheme(s). The date that the Plan and Scheme(s) are made are for the authority to determine. In setting the start date, the LTA should take account of the statutory 70-day notice period for changing registrations with the Traffic Commissioner, if service changes are immediately planned.

No later than 14 days after the date on which the Plan and Scheme(s) are made, the authority must give notice to relevant stakeholders that they have been made. Relevant stakeholders are all operators, the travelling public and the Traffic Commissioner.

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BUS SERVICE IMPROVEMENT PLAN

EP Plan Area, Objectives, Policies, Consultation Plans	Bus Service Improvement Plan Sets out how the Objectives established in the EP are to be delivered, including resources and responsibilities – Monitored, reviewed and updated annually	In parallel with the establishment of the Enhanced Partnership, following publication of the national bus strategy all LTAs are required to produce a Bus Service Improvement Plan (BSIP). The purpose of the BSIP is to set out how the LTA will use the EP Plan and Scheme to deliver their vision and objectives. The BSIP will be updated annually and must be reflected in the authority's own Local Transport Plan and other relevant plans.
EP Scheme(s) Requirements and actions for services in the area		

The BSIP will be more detailed and specific than the EP Plan, including how the interventions and measures needed by the EP Plan will delivered and funded.

The initial draft BSIP must be produced by 31 October 2021 and may initially be relatively high level. Some elements may be established in the EP Plan and Scheme, then re-stated and detailed in the BSIP.

Next steps

By the end of June 2021, every LTA must, as a minimum, publish a Notice of Intention to commence formal discussions to establish an EP. A model template for this notice is given below.

Nothing further is required by the end of June.

EP NOTICE TEMPLATE

Notice of Intent to Prepare an Enhanced Partnership Plan and Schemes

[Date]

At its meeting on [date], [Name of LTA] gave approval to proceed with the development of an Enhanced Partnership. The commencement of this is confirmed through this notice of the intention to prepare an Enhanced Partnership Plan and accompanying Enhanced Partnership Schemes, as required and set out in section 138F of the Transport Act 2000.

Geographical description of the proposed EP

From June 2021, formal discussions following the process described in this document need to take place to have an EP agreed and established by the end of March 2022. An estimate of the minimum time for these steps is given in Table 2 and Table 3, noting the tight timescales for delivery.

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Table 2 – Indicative timeline for establishing an Enhanced Partnership

Stage	Minimum Time / By date
Liaise with neighbouring areas	ongoing / by mid-June 2021
Informal discussion	ongoing / until end June 2021
Notice of Intention and Invitation to Participate	By 30 June 2021
Define level of ambition & BSIP outline	By 16 th August (Draft Cabinet Report)
Council Cabinet Meeting	7th September
Formal discussion, negotiation	8 weeks / end September 2021
Formal notice 1	4 weeks / end October 2021
Publication of first Bus Service Improvement Plan	End October 2021
Formal statutory consultation	4 weeks / end November 2021
Finalise plan, scheme	3 weeks / end December 2021
Formal notice 2 (if required)	4 weeks / end January 2022
Make plan, scheme	1 week / February-March 2022
EP Plan and Scheme active	By 1 April 2022



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Table 3 – Indicative programme for establishing an Enhanced Partnership

