



# Consulting on Enhanced Partnerships

December 2021

## **1 Introduction**

- 1.1 Unlike Bus Service Improvement Plans (BSIPs), Enhanced Partnership Plans (EPPs) and Schemes (EPSs) are statutory documents and consultation is required by law (Transport Act 2000, section 138F).
- 1.2 This document cites the statute containing the relevant legal duties; includes references to what the courts have said about consultation; quotes Government guidance and advises on best practice.
- 1.3 It starts by setting out who must be consulted before reviewing the approach to consultation, its duration, purpose, consultation questions, considering responses and providing feedback. We also set out what we expect from a plan to consult users on how well the EPP and EPS are working, and examine the implications of the different mechanisms for varying an EPS.

## **2 Who to consult**

- 2.1 The Bus Services Act 2017 incorporates a duty on local transport authorities to consult on EPPs and EPSs into the Transport Act 2000. Section 138F (6) of the Transport Act 2000 specifies stakeholders who must be consulted:
  - all affected operators
  - user representatives
  - affected local authorities
  - Traffic Commissioner
  - police
  - Transport Focus
  - Competition and Markets Authority.
- 2.2 Government guidance on *Delivering Bus Service Improvement Plans using an Enhanced Partnership* was published in 2017 and revised in 2021. This also mentions MPs and, when modifying services, major local employers and 'existing passengers on affected services' (section 5).
- 2.3 The Act provides some latitude for authorities when interpreting what is meant by user representatives. It refers to 'such organisations appearing to the authority or authorities to be representative of users of local services as they think fit'. Not every authority will have a bus user group or a public transport user group covering their area. Even if you do, you may want to consult more broadly to seek the views of people with protected characteristics, elected members, parish councils or local businesses. You may find it helpful to look at Transport Focus' guidance on *Passenger representation on Bus Service Improvement Plans*.
- 2.4 Do you have to consult the public? The Transport Act 2000 does not explicitly say that you must. Section 2.7 of the Government guidance refers to 'public' consultation but does not elaborate beyond saying that where stakeholders

have been fully engaged in the development of the EPP and EPS it may only be necessary to 'seek views from stakeholders that have not been involved to that point – such as local people'. From discussions with the Department for Transport it appears that whether the public should be consulted may depend on the scale of the changes proposed.

- 2.5 Some authorities consulted the public on various aspects of their BSIP and some have consulted specifically on the relative priority of the measures in their BSIP with a view to informing a subsequent stakeholder consultation on their Enhanced Partnership. Looking at the BSIP and EP process in the round it is clearly desirable that the public should have been consulted at some point and ideally invited to indicate what matters most to them when it comes to improving their bus services.

### **3 Approach to consultation**

- 3.1 The Transport Act 2000 does not define how authorities need to consult. However, it is implicit that the draft EP documents on which you are consulting need to be made available.

- 3.2 Your EPP must include a plan for consulting users on how well the Plan and Scheme are working: Transport Act 2000, section 138A (8):

*“An Enhanced Partnership Plan must include a description of the authority's or authorities' plans for consulting such organisations appearing to the authority or authorities to be representative of users of local services as they think fit in order to seek their views on how well the plan and any related scheme are working.”*

- 3.3 Advice on how to discharge this obligation is set out in section 7 below.

### **4 Lawfulness of consultations**

- 4.1 In addition to complying with the letter of the statutory requirements local transport authorities (LTAs) should be aware of the 'Gunning Principles' which govern the lawfulness of all consultations. There are four principles:

- consultation must take place when policies are at a **formative stage**
- sufficient information/reasons should be provided to allow for **intelligent consideration** of proposals
- **adequate time** must be allowed for consultees to consider and respond to proposals
- responses must be **conscientiously taken into account**.

- 4.2 Authorities should also be aware of their Public Sector Equalities Duty (section 149 of Equalities Act 2010) and consider its relevance to their Enhanced Partnership consultation.

## **5 Duration of consultation**

- 5.1 The Transport Act 2000 does not define a minimum duration for your consultation.
- 5.2 A Government *Code of Practice on Consultation* recommending that consultations should normally last for at least 12 weeks was replaced in 2012 by *Consultation Principles* (updated in 2018) which merely say that 'consultations should last for a proportionate amount of time'.
- 5.3 We accept that a 12-week EP consultation is unlikely to be an option for most authorities and that, in practice, some authorities may only be able to fit in a consultation of between four and six weeks. We do not feel that a consultation of less than four weeks would normally be acceptable.
- 5.4 When planning your consultation, make sure you allow sufficient time to analyse, consider and report responses and to decide whether to modify your Plan and/or Scheme if required. Any changes to your Plan or Scheme trigger a further statutory 28-day objections process (see Government guidance section 6.2). Starting the consultation later than January would allow little time to complete these processes.

## **6 Designing your consultation**

- 6.1 When designing your consultation it is important to be clear about its purpose. Everyone would agree that, at minimum, it should satisfy the statutory requirements in the Transport Act 2000 and follow the Government guidance.
- 6.2 To make the most of the opportunity you may wish to consider additional objectives. For example, to raise awareness and understanding of your proposals for improving bus services among your target audience and to provide them with a (further) opportunity to comment on and influence those proposals.
- 6.3 The questions you ask should reflect your consultation objectives. Essentially you will need to ask about the content of your Plan and Scheme. For example how they are helping to implement your council's policies and achieve your wider objectives, about requirements on the authority and on local bus operators in terms of facilities and measures (Transport Act 2000 section 138A).
- 6.4 Simple yes/no questions seeking approval for specific elements are not, of themselves, particularly helpful. Consultees are likely to want to explain their answers, rather than just tick a box that says they agree or disagree. Statutory consultees in particular require an opportunity to comment, so open questions

are much better, using a format such as ‘do you have any comments about...?’

- 6.5 When considering what to ask, think about who you are expecting to respond and try to give some thought to what you might do with their answers.
- 6.6 The timetable for approving your EPP and EPS, and the steps you are required to take when modifying your EP to accommodate consultation responses, are likely to severely constrain your opportunity to amend your EP. However, it is worth remembering that the Enhanced Partnership Plan and Scheme that you make in March is not the only way to capture your approach to improving local bus services. Consultation responses may be helpfully considered in relation to the following:
- future variations to your Enhanced Partnership Plan (Transport Act 2000 section 138K and bespoke arrangements introduced under section 138E)
  - additional Enhanced Partnership Schemes (Transport Act 2000 section 138A(2))
  - revisions to your Bus Service Improvement Plan
  - Bus Passenger Charter.
- 6.7 Future opportunities identified in your BSIP are important as well as the shorter term opportunities which are fully funded. Consultees can be invited to help you prioritise and thus influence EP variations and subsequent Schemes.

## 7 Your plan for consulting users on how well the EP is working

- 7.1 You should include a question on your plan for consulting users on how well the Plan and Scheme are working, as required by the Transport Act 2000, s138A (8). Your plan should address:
- **who to consult:** consider including local businesses, people with protected characteristics, elected representatives (see Transport Focus guidance on passenger representation on BSIPs)
  - **when to consult:** consider whether you can integrate this consultation with annual revisions of your BSIP and regular reviews of your performance against your BSIP targets
  - **how to consult:** consider commissioning passenger research such as focus groups as well as running a consultation
  - **what to ask and what information to provide:** include performance information, ask about outcomes and measures.

## 8 Varying EPs

- 8.1 Section 138K of Transport Act 2000 makes provision for EP Plans and Schemes to be varied. Section 138E allows for bespoke variation mechanisms to be included in your EPS.

- 8.2 Section 7 of the Government guidance also explains how to do this. Bespoke variation arrangements for Schemes are covered by paragraphs 7.19 to 7.25 of the guidance.
- 8.3 We accept that it may be helpful for partnerships to be able to make relatively minor tweaks to their Schemes in future without having to carry out another statutory consultation. However, Transport Focus is concerned that some authorities may be tempted to use the bespoke variation mechanism to make much more significant changes, thus sidestepping the consultation requirement. We do not believe it is in the spirit of the legislation to do so, particularly where uncertainty about funding understandably results in some authorities consulting on a relatively bland document in the first instance. Significant additional measures should be introduced as new, additional Schemes following the consultation requirements set out in the Transport Act.

## **9 Providing feedback**

- 9.1 As with any consultation, a report should be written summarising consultation responses.
- 9.2 This should be accompanied by a report on the outcome of your consideration of these responses. This may take the form of a report for your council.
- 9.3 These reports should be published on your website. A press notice and other publicity should be used to draw attention to them and to explain what the next steps are in the process.



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