

QUALITY PARTNERSHIP SCHEMES IN ENGLAND

GUIDANCE

This Guidance has been produced by the Bus Partnership Forum, Task & Finish Group for Quality Partnership Schemes. Members of the Task & Finish Group included representatives from the Department for Transport, Bus Operators, Passenger Transport Executive Group (PTEG), and ATCO. More information on the work of the Bus Partnership Forum is available on <http://www.dft.gov.uk/buses>

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EXECUTIVE SUMMARY

Outside London, local bus services are deregulated and the majority are provided commercially by operators. However, the provision of high quality services is not entirely within the control of bus operators since they do not have control over the infrastructure on which the services depend - the roads, traffic signals, bus shelters etc. Similarly there are many matters over which local transport authorities have no direct control and little, if any, influence - the quality of vehicles used by operators, the standard of services and customer care provided. Yet it is in the interests of both local transport authorities and operators that attractive bus services be provided.

The Transport Act 2000 introduced various powers for local authorities who wish to go further in improving the quality of bus services in their area. This Guidance covers the power for local authorities to make Quality Partnership Schemes. These schemes are made by the local authority following which bus operators may sign up to them. Though it is the local authority that makes the scheme, the spirit of the power is one of partnership between local authorities and bus operators since both control only part of the solution to better bus services. Together, through a Quality Partnership Scheme on particular bus routes, they can be sure that both sides of the partnership will deliver specified “facilities” (e.g. quality bus shelters), by the local authority, and “standards of services” (e.g. quality buses), by bus operators.

This Guidance on Quality Partnership Schemes (QPSs), produced by the Bus Partnership Forum, covers:

- Why partnerships works.
- The nature of a Quality Partnership Scheme, including: the differences between voluntary agreements and a statutory scheme; the legislative features of a QPS; and why a QPS might be beneficial to both operators and local transport authorities.
- The contents of a Quality Partnership Scheme, including what “Facilities” and “Standard of Services” can and can not be included in a QPS; issues surrounding what is excluded from a QPS; and the relationship between a QPS and a traffic regulation order.
- How a Quality Partnership Scheme is established, including what consultation is needed before establishing a QPS; who establishes and develops a QPS; what a QPS looks like; what an operator can do if it does not like the contents of the QPS; and how the Competition Test applies to a QPS.
- How to make and introduce a Quality Partnership Scheme, including what steps have to be taken after the QPS has been made; and how long a QPS lasts.
- How a Quality Partnership Scheme might be managed and enforced, including how a QPS should be monitored; if and how a QPS can be varied; how a new operator can join an existing QPS; how an operator can leave a QPS; what happens if an operators does not adhere to the QPS; the role of the Traffic Commissioners; what happens if a local transport authority does not adhere to the QPS; and what happens at the end of the period of the QPS.

It is hoped that this Guidance will clarify the provisions contained in the Transport Act 2000 and encourage local authorities and bus operators to use the power to improve bus services.

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1. Introduction: Working in partnership

- 1.1 Local bus services outside London are deregulated and the majority are provided commercially by operators. It is in the interests of both local transport authorities and operators that attractive bus services be provided. However, the provision of high quality services is not entirely within the control of bus operators since they do not have control over the infrastructure on which the services depend - the roads, traffic signals, bus shelters etc. Similarly there are many matters over which local transport authorities have no direct control and little, if any, influence - the quality of vehicles used by operators, the standard of services and customer care provided.
- 1.2 Operators benefit from increased patronage if services are fast and reliable. Local transport authorities are better able to fulfil policy objectives and meet national and local targets if the transport needs of people living or working in their area are provided commercially by operators meeting high standards. For example, traffic congestion and pollution can be reduced if car users are persuaded to make more journeys by bus, and social inclusion objectives can be met if people dependent on buses can access essential services more easily and quickly.
- 1.3 While operators and local transport authorities can both address their objectives separately, experience shows that the best results occur when they work together in partnership. In recent years there have been many examples of successful Quality Bus Partnership Agreements (QBPA) between local transport authorities and bus operators, entered into on a voluntary basis with varying degrees of formal commitment. The Transport Act 2000 introduced the concept of Quality Partnership Schemes (QPS) with a statutory procedure for establishing, maintaining and enforcing them.
- 1.4 In the metropolitan areas, there is a functional split between the Passenger Transport Authorities (PTAs) and Executives (PTEs) on the one hand, which are responsible for local public transport planning and securing socially necessary public transport, and the metropolitan district councils (MDCs) on the other, which are the highway and traffic authorities for roads in their areas (excluding trunk roads). Both tiers of authority should be involved in the partnership process. Specifically, where a QPS would require the making of a traffic regulation order, the Scheme *must* be made jointly by the district council, as traffic authority, and the PTA.
- 1.5 In non-metropolitan areas, the unitary or county council is both the local transport authority and highway and traffic authority, and so there is no requirement for second tier authority involvement. However, a district council may be invited to participate as a third party to a QPS or in a supporting agreement.

DESCRIBING A QUALITY PARTNERSHIP SCHEME

2 What is the difference between a Quality Partnership Scheme and a Quality Bus Partnership Agreement?

2.1 A Quality Partnership Scheme is a *Statutory Scheme* with its process, form and content prescribed by the Transport Act 2000. It is made by a local transport authority and should not be described as an agreement. For the purpose of clarity within this Guidance, a Quality Partnership Scheme is referred to as a 'QPS' or 'Scheme'.

2.2 By contrast a Quality Bus Partnership Agreement is a *Voluntary Agreement* between one or more local authorities, which may or may not be local transport authorities, a bus operator and (optionally) third parties. It can range from a simple document detailing heads of agreement, formed on the basis of a signature and/or a handshake, to a legally binding comprehensive and detailed document. There are some significant differences of approach between this and a Scheme. Again, for the purpose of clarity within this Guidance, a Quality Bus Partnership Agreement is referred to as a 'QBPA' or 'agreement'.

2.3 There are several hundred QBPAs in existence, ranging from "overarching" agreements covering the whole of a local authority area to specific corridor agreements. Many of these are working very successfully and in many circumstances they can be at least as effective as a QPS. However, there are things which cannot be done through a QBPA. In particular, an agreement only binds the operators that are parties to it and cannot prevent other operators from using the facilities provided. Hence, to achieve certain objectives, a QPS is necessary.

2.4 There are a number of formal differences between the two forms of arrangement. A QBPA is *negotiated* between two parties, either the highway or local transport authority and the operator. A QPS is "*made*" by the local transport authority or authorities (or jointly with one or more metropolitan district councils) after consultation with operators and other relevant organisations. A QPS will be available for any operator in the relevant area to join, by giving an undertaking to the traffic commissioner to provide the required standard of service in exchange for the right to use the facilities provided under the Scheme. Similarly no operator is bound to participate, but those that do not are excluded from using those facilities.

2.5 A QBPA often commits each party to a programme of incremental improvement over time. A QPS requires all the facilities to be in place from the outset of its operation (though QPSs can subsequently be varied). It should be noted, however, that in a QBPA there is no mechanism to prevent non-participating operators using the improved facilities in competition with those operators that have entered into QBPAs,

whereas a QPS gives enforcement powers to the traffic commissioners against an operator that uses the facilities without complying with the requirements of the Scheme (see section 22 of this guidance).

- 2.6 A QPS must serve to further the implementation of the policies set out in the local transport authority's bus strategy (or in the case of authorities designated as 'excellent' under the Comprehensive Performance Assessment (CPA) process that have chosen not to prepare a bus strategy, the equivalent policies they have formulated regarding bus services in their area). A QPS is very different from a Quality Contract, on which the Department for Transport has issued separate guidance – available online at: http://www.dft.gov.uk/stellent/groups/dft_localtrans/documents/divisionhomepage/032416.hcsp
- 2.7 There are certain things which a QPS cannot do, for instance a QPS does not allow for service frequencies or timetables to be specified. However, a QBPA may, in principle, cover anything the parties can agree to which is consistent with any other relevant legislation, in particular the Competition Act 1998, and can be used to support a QPS.
- 2.8 A QPS must satisfy the competition test in Schedule 10 of the Transport Act 2000. This does not apply to QBPA's, but they are subject to the requirements and prohibitions of the Competition Act 1998.
- 2.9 A QPS may often be a means of contributing to wider traffic management objectives and helping local highway authorities to fulfil their duties under the Traffic Management Act 2004.
- 2.10 There is a specified procedure for publishing proposals for a QPS and for consultation on the proposals before the Scheme is made. The local transport authority (or authorities) that make the Scheme is under a statutory duty to provide the facilities specified in the Scheme, and to maintain those facilities for as long as the Scheme is in operation. All these matters are dealt with at greater length within this Guidance.

3. What are the legislative and descriptive features of a QPS?

3.1 The legislation concerning QPSs is set out in sections 114 to 123 of the Transport Act 2000. Local transport authorities (PTAs, county councils, and unitary authorities outside the metropolitan areas) have the power to set up QPSs. The essential feature of a QPS is that the local transport authority provides particular facilities and sets the standard of services to be observed by bus operators as a condition of using these facilities. A QPS must contribute to the implementation of the bus strategy and be aimed at improving the quality of local services for the benefit of bus users or at improving the environment by limiting congestion, noise or air pollution. "Local services" are defined in section 2 of the Transport Act 1985.

3.2 A QPS must provide facilities at specific locations along bus routes, or prospective bus routes, which bus operators can use. Examples of such facilities can be found in Annex 2. A QPS may also include other ancillary facilities. In addition, Traffic Regulation Orders (TROs) may be needed to support these physical facilities. Both the facilities and the new standard of services must in themselves improve the quality of local services in the relevant area.

3.3 The Transport Act 2000 does not prevent authorities and operators from making agreements in addition to QPSs. Indeed it may be beneficial for a QPS to be supplemented by one or more supporting agreements. In the Parliamentary debates on the Bill which became the Transport Act 2000, Keith Hill, then Minister responsible for buses, said:

“It is perfectly open to local authorities to come to non-statutory agreements with operators - just as they can, and do, now. The Bill does not stop that. If a local authority, perhaps alongside a statutory quality partnership, wants to encourage a bus operator to run more frequent services, to make best use of the new facilities, nothing in the Bill prevents it from doing so... I reiterate that it is perfectly possible for there to be both a statutory quality partnership, and a kind of codicil to that partnership that makes voluntary agreements about frequency and timetabling.”

(Hansard, House of Commons, Standing Committee E, 19th sitting, Thursday 17 February 2000 (afternoon), Col.726).

4 Why might Operators prefer a QPS to a QBPA?

- 4.1 There are two reasons why operators may prefer a QPS to a QBPA. One is to ensure, as far as is possible, that effective bus priority and other measures required to enable bus services to be operated punctually, reliably and efficiently, are actually delivered, and that their provision, maintenance and enforcement survives any subsequent change in policy or priorities.
- 4.2 The second is to offer some degree of protection of an operator's investment, where guaranteed provision of bus infrastructure by a local transport authority is matched by a high level of investment in a quality vehicle fleet. Under a QBPA 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 low quality vehicles immediately ahead of the higher quality vehicles provided as part of the QBPA. Section 118(4) of the Transport Act 2000 allows a QPS to impose an appropriate quality threshold to prevent use of the new facilities by vehicles that do not meet certain specified standards, thereby ensuring the quality of the service is commensurate with the quality of the facilities.

5. Why might Local Transport Authorities prefer a QPS to a QBPA?

- 5.1 There are three reasons why a local transport authority may prefer a QPS to a QBPA. One is that a QPS ensures that all operators that use the facilities must abide by the same conditions. In contrast, a QBPA may be diluted, or fail to deliver, because an existing operator refuses to be bound by a QBPA even though most operators are prepared to commit to a higher standard of service. The second is that a QBPA once launched, cannot prevent an operator on the route or in the area from operating a lower quality service than the higher standard of services to which other operators have committed under the QBPA. A QPS may help prevent such an incursion. The third is that a local transport authority may wish to lever a higher quality of service from operators than it can obtain through a QBPA, and operators may consider that a commercial case exists because of the commitment shown by the local transport authority.
- 5.2 The local transport 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 affected operators to ensure that the standards are set at an appropriate and achievable level that will deliver value for money both as regards policy and commercial objectives.
- 5.3 By making a QPS a local transport authority is given the opportunity to encourage, protect and enforce, through the Traffic Commissioner, quality improvements from operators in return for improving facilities for them and for their passengers in a way that a QBPA may not.

CONTENTS OF A QUALITY PARTNERSHIP SCHEME

6 What 'Facilities' and 'Standard of Services' can and can not be included in a QPS?

- 6.1 A QPS may include direct or ancillary facilities the local transport authority considers will, in the context of the scheme as a whole improve the quality of local services, reduce or limit traffic noise and congestion, or 'to any extent implement the policies set out in its bus strategy' (section 114(1)). Annex 2 provides more information as to what might be included as a facility. It may be necessary for the local transport authority 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 and police authorities if these powers are not coincident with the local transport authority.
- 6.2 Annex 2 contains a checklist of 'facilities' that the local transport authority may want to consider as part of a QPS. Among the facilities that are excluded from consideration are those to be provided as a result of section 139 or section 140 of the Transport Act 2000 i.e. information about bus services (routes, timetabling and fares etc) which the authority decides should be made available to the public. Such information needs to be available to all in any case but it is up to the relevant authority to decide what information is included in the wider public obligation resulting from these sections. Any facility providing information in addition to this can be included in a QPS.
- 6.3 The QPS also needs to specify the 'standard of services' required from operators providing services that may make use of the facilities provided under the Scheme. The 'standard of services' specifically excludes frequencies and timings of services. There is no mention of 'fares' in section 114 of the Transport Act 2000, which has led to an assumption that fares are different to a 'standard of services' and therefore are highly likely to be ineligible. The Department for Transport will issue further guidance on this subject in due course.
- 6.4 The examples of 'facilities' and 'standard of services' outlined within Annex 2, support existing best practice to date. However, these should only be taken as an indicative guide. Case law may determine and refine final definitions over time, and so the checklist of examples in Annex 2 is neither definitive nor exclusive.

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

7.1 All the facilities forming part of a QPS must be in place by the date when the Scheme comes into operation. (See section 118(1)(a) and 116(4) of the Transport Act 2000). A QPS may also, with some restrictions, include facilities which already exist. This enables facilities originally provided under QBPA's, 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.

7.2 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 standard of services. 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.

7.3 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.

7.4 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 and not subsequently withdrawn.

7.5 It will be noted that 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, and does not withdraw an objection. 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, they do not have the right to veto its inclusion. (See paragraph 10.1 on whether a traffic regulation order is to be regarded as a "facility").

8 Can provision be made for issues precluded from a QPS?

8.1 A supporting agreement or agreements can be introduced to support a QPS to cover issues which cannot be included within a QPS. A supporting agreement might, subject to legal advice, include bilaterally agreed guaranteed minimum service frequencies, information provision and development of telematics systems, for instance, together with broader and wider ranging issues of partnership such as the promotion of bus use and measures to encourage modal shift. It is recommended that, where appropriate, the form of such a supporting agreement is a legally binding document, signed by the operator, the local transport authority and, where different, the traffic authority, together with any relevant third party e.g. the Police or Highways Agency.

8.2 Whilst operators and local authorities are not obliged to enter into QBPA's or even may not wish to, those which do should seek to establish links between the QBPA and any proposed or developing QPS. To reduce exposure to any potential investigation by the competition authorities, there should be a separate QBPA of this nature for each bus operator involved in the QPS, i.e. a series of bilateral agreements.

9 Can services be excluded from a QPS?

9.1 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, then that exclusion needs to 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;
- 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;
- community bus services;
- local services not normally available or widely used by the general public (e.g. school buses).

10 Can an existing Traffic Regulation Order (TRO) be included in a QPS? What if a Trunk Road is involved?

- 10.1 The wording used in subsections (7) and (8) of section 114 of the Transport Act 2000 indicates that a TRO may often be necessary to give effect to the provision of a facility, but suggests that TROs themselves are not facilities. A facility such as a bus lane will depend on a TRO to prohibit the use of the lane by other traffic. Providing and enforcing the TROs and the traffic signs necessary to enforce them can therefore be as important to the success of a QPS as providing the facilities themselves.
- 10.2 It should be noted that Paragraph 27(3) of Schedule 9 to the Road Traffic Regulation Act 1984 (inserted by Schedule 11 to the Transport Act 2000) prevents a traffic authority from varying and 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.
- 10.3 If a QPS involves the making of a Traffic Regulation Order (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 local transport authority(ies) and the Secretary of State, through the appropriate Highways Agency regional office.

ESTABLISHING A QUALITY PARTNERSHIP SCHEME

11 What consultation is needed before establishing a QPS?

11.1 *Preliminary steps*

Besides the statutory consultation procedure set out in the Transport Act 2000, local transport authorities are advised to make informal contact with bus operators at an early stage of planning a QPS, and with the Highways Agency where there is potential for impact on the trunk road network. This will ensure that the published proposals come as no surprise and that operators have a chance to comment on the feasibility and acceptability of the proposals. Operators will want to be satisfied firstly that what the local transport authority is offering will deliver the necessary improvements to allow them to operate faster and more reliable services in support of the work of the national ‘Make Buses Run Faster’ group, and secondly that they can meet the service standard commitments without undue difficulty. It is worthwhile at this stage also considering matters that might be the subject of agreements between operators and the local transport authority, to underpin and support the QPS. Where the local transport authority is a PTA, it is also important to initiate early meetings with the relevant MDC or MDCs that may be joint sponsors of the Scheme. It is recommended that the need for this preliminary consultation is specified in any supporting agreement developed prior to a QPS. A schematic flow diagram of the process for establishing a QPS is attached as Annex 1.

11.2 *Notification*

The first formal stage is for the promoting local transport authority (or authorities) to publish a notice of the proposed QPS in one or more newspapers circulating in the area it would cover. Either the notice itself must give full details of the facilities covered by the Scheme and the standard of service required, or it must state where such details may be inspected.

11.3 *Consultation*

After giving notice, the local transport authority 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 local transport authority should consult the national organisation, Bus Users UK, which can be found at www.bususers.org.uk);

- other relevant local authorities that they think would be affected by the QPS - these include other local transport authorities, metropolitan district councils, and also, where appropriate, adjoining local transport authorities in London, Wales or Scotland;
- the Traffic Commissioner for each traffic area affected by the QPS;
- the chief officer of police for each police area affected by the QPS.

The local transport authority should also consult any other persons they think fit. This could well include non-metropolitan district councils whose policies (e.g. on planning or on [off-street] parking) could be affected by the Scheme, and those affected by the proposed works (i.e. development of the facilities) required prior to the Scheme's commencement.

- 11.4 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).

12 Who establishes and develops a QPS and how?

- 12.1 It is for local transport authorities to establish QPSs. In the case that a highway authority is also the local transport authority 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 local transport authority boundaries can be established provided it is made jointly by both or all the local transport authorities.
- 12.2 In the metropolitan areas, the local transport authority concerned is the PTA. However, that authority does not have responsibility for highways or traffic - those belong with the metropolitan district councils (MDCs). So in cases where a QPS will require a traffic regulation order (TRO) to form part of, or enable a facility, the Scheme *must* be made jointly by the PTA and the relevant MDC (or more than one), in accordance with section 114(7) of the Transport Act 2000.
- 12.3 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 PTA and MDC to enter into a legally binding supporting agreement to ensure that this participation is achieved in practice.
- 12.4 Likewise, whilst nothing in the 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

supporting 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 as outlined in section 8. Indeed, there may be great value in a bilateral process linking supporting agreements directly to the terms and durations of the QPS, as shown in the schematic flow diagram in Annex 1.

- 12.5 It is for the local transport authority to consider how best to go about developing a Scheme, but early involvement of all relevant parties is a key to success. If the LTA is not the highway authority, sections 114(7) and 114(8) of the Transport Act 2000 must be complied with and the district council and/or the Secretary of State, will need to be a joint promoter.

13 How do I know that I am looking at a QPS?

- 13.1 The document should include the word ‘Scheme’ in its title, and should not be referred to as an “agreement”. It should make reference to it being made by the relevant authority or authorities under section 114 of the Transport Act 2000.
- 13.2 By contrast a QBPA is an agreement between two or more partners. It should not refer to the Transport Act 2000, and its appearance may be that of a contractual document.

14 What does an Operator do if it does not like what is proposed? How does the Competition Test apply to a QPS?

14.1 Best practice for the establishment of a QPS would be for the proposing local transport authority to enter into preliminary discussions with local operators prior to the first drafting of proposals. In that way through a spirit and practice of partnership the content of the QPS (and any supporting agreement) is likely to meet the aspirations of all parties. However, having drafted a QPS, the local transport authority making it is obliged to publish it and undertake a formal consultation exercise in accordance with section 115 of the Transport Act 2000.

14.2 A more thorough consultation is required should the proposed QPS contain any items of infrastructure which are already in place prior to the making of the Scheme. This is outlined in Section 7 of this guidance.

14.3 If an operator considers that any obligation being placed upon it which would permit it to use the facilities provided under the QPS is unreasonable, in that it raises a barrier to entry which is considered to be excessive, then it may call for the application by the local transport authority of the Competition Test.

14.4 A QPS must satisfy the requirements of the Competition Test in Schedule 10 to the Transport Act 2000. This requires that:

- 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 substantial benefit to their users;
 - reducing or limiting traffic congestion, noise or air pollution.

The specified standard of services should be one which can be reasonably met by any operator, unless the standard is higher but the benefits derived from its application outweigh the costs of compliance. For instance, a requirement to operate buses with facilities 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 a requirement to operate vehicles built by a particular manufacturer or to a particular design is likely to be unreasonable.

- 14.5 The Office of Fair Trading (OFT) is entitled to investigate whether 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 local transport authority, makes an application to the OFT. The OFT has issued guidance on the Competition Test (OFT 393, October 2003, available free of charge from www.offt.gov.uk).
- 14.6 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. The final sanction available to a bus operator would be to cancel the registration of the services subject to the QPS, but this would need to take place before signature of any supporting agreement guaranteeing service frequency.
- 14.7 As a safeguard measure, it is recommended that any legally binding supporting agreement should not be signed until appropriate consultation on the drafting of the QPS is undertaken and the draft QPS is published. Alternatively, where there is a perceived danger of disagreement between the local transport authority and the operator(s) regarding the content of the QPS, the supporting agreement should not be signed until the QPS is made (but before it is brought into operation) or if signed, should be stated to come into force upon the making of the QPS.

MAKING AND INTRODUCING A QUALITY PARTNERSHIP SCHEME

15 Making and Introducing a QPS

15.1 Following consultation, the local transport authority may make the QPS, either as originally proposed or with modifications. Modifications, where made, ought to reflect the views expressed in response to consultation, though some may also be necessary simply because external circumstances have changed since the QPS was originally proposed. If modifications are likely to change the Scheme significantly, or in ways that the consultees could not reasonably have anticipated, the local transport authority would be advised to reconsult at least those parties who would be specifically affected by the changes (and who might have responded differently had they known about the changes). However, reconsultation is not a statutory requirement, and each case must be considered on its merits. Annex 1 summarises this process in schematic form.

15.2 The Transport Act 2000 does not specify what is meant by "making" a Scheme - the formal procedure for adopting it will depend on the practice of the local transport authority (or authorities) concerned. For example, a resolution of the Full Council, or Executive Committee or Passenger Transport Authority 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;
- the standard of services to be provided by bus operators under the Scheme;
- the date on which it comes into operation (see below);
- the period during which it remains in operation (see below).

15.3 The date of coming into operation must not, at any event, be less than 3 months after the date on which the QPS is made. But if one or more traffic regulation orders are needed to give effect to the Scheme then the date must also be at least 3 months after the date on which the order (or the latest of those orders) is made. However, these are only minimum times, and the important issue is that sufficient time is allowed for the local transport authority to provide all the necessary facilities and for operators to provide services to the specified standard. It is important to bear in mind that the facilities must all be in place by the date on which the Scheme comes into operation in accordance with sections 118(1)(a) and 116(4) of the Transport Act 2000.

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

16.1 Notification

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, and 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 area affected by the Scheme.

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.

16.2 Postponement

Although the QPS must specify a date of coming into operation, there may be instances where, due to unforeseen circumstances, it becomes impossible to make all the necessary arrangements by that date. There is therefore a provision for postponing the date for up to (but no more than) 12 months from the original proposed implementation date. However, before they can do so, the local transport authority must:

- consult all the operators they think would be affected by the QPS, 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 direct to affected operators and the relevant Traffic Commissioner(s).

16.3 Implementation

The local transport authority or authorities making the QPS has a duty to ensure that all the facilities are in place and useable by the date on which the Scheme comes into operation, 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 local transport authority's control.

16.4 For operators, the necessary formal procedure is to give a written undertaking to the Traffic Commissioner that they will provide the standard of services required by the QPS. 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, 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 compliance with that undertaking, i.e. that:

- 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).

Operators that chose to continue to operate along a route subject to a QPS but which are not participating in the Scheme, will need to give thought to what, if any, stopping points they observe. They will need to be able to satisfy the Traffic Commissioner that they are neither using the facilities included in the Scheme, nor are they planning to stop in places that will create adverse traffic congestion or safety impacts.

17 How long does a QPS last?

17.1 The Transport Act 2000 provides that a QPS must remain in operation for at least 5 years. There is no upper limit, but local transport authorities 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 can be specified in a supporting agreement (though not in the QPS itself). The Transport Act 2000 requires there to be a definite end-date for a Scheme, though this may be subsequently varied, if the variation procedure specified in section 120 of the Transport Act 2000 (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 a service under the Scheme. Both procedures require public consultation.

MANAGING AND ENFORCING A QUALITY PARTNERSHIP SCHEME

18 How should a QPS be monitored?

18.1 Once a QPS is in place, all the participants will want to monitor whether it is achieving the objectives that they each expected from the Scheme. It would be good practice at the start of implementation to set an informal 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 local transport authority making the Scheme in relation to the Freedom of Information Act 2001.

18.2 At the very least, 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 local transport authority to vary the Scheme or extend the period over which it operates.

18.3 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. This said, there is a process in the Act for varying any scheme, and this should be followed if for example any local transport authority 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.

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

19.1 As mentioned in paragraph 18.2, there are provisions for the local transport authority (or authorities) that made the QPS to vary it. The notification and consultation procedure is currently the same as for making a new Scheme. Other than where the variation would require the making of a Traffic Regulation Order, there is a power for the Secretary of State to modify this procedure by regulations, but at present no such regulations have been made.

19.2 Where the local transport authority and bus operator(s) wish to link a series of planned provisions of facilities with a series of tiered standards of services, this could be achieved through the definition of "Facilities" and "Standards of Service" in a scheme to include additional items from certain dates. The

LA would have to provide the added facilities, and operators would have to provide added services 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 variation of the scheme is to be avoided later.

20 How can a new operator join an existing QPS?

20.1 If a new operator wishes to join 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 have been excluded, they need to give a written undertaking to the Traffic Commissioner. It would also be appropriate for the operator to let the local transport authority know of their intentions, so that it will be aware of their actions as regards monitoring or enforcement of the QPS. There is nothing in the Transport Act 2000 to limit this procedure to the time when the Scheme first comes into force.

21 How can an Operator leave a QPS?

21.1 Although a QPS obliges a participating operator to comply with its terms, 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.

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

22.1 If an operator has registered with the Traffic Commissioner an undertaking to meet the service standard required by a QPS, and subsequently fails to meet those standards, the Traffic Commissioner may impose a penalty or sanction. Similarly, the Traffic Commissioner can penalise an operator that uses the Scheme facilities without having given an undertaking to meet the required standard.

22.2 The penalty in either case is the same as that for failing to operate a local service in accordance with the registered particulars, and 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); or
- a condition on the operator's licence prohibiting it from operating specified local services, or any local service (and the consequential cancelling of the registrations of affected services).

In more serious cases, it is open to the Traffic Commissioner to revoke, suspend or curtail the period of validity of the operator's licence on the grounds that an undertaking recorded in the licence has not been fulfilled.

22.3 Section 118(4)(b) of the Transport Act 2000 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.

22.4 It should also be noted that a Scheme does not prevent an operator with a lower standard of services than that prescribed from operating a service along the same route as the QPS, but that operator would not be permitted to use the facilities provided under the Scheme. Hence, an operator which has provided the relevant undertaking to the Traffic Commissioner to meet the Scheme standard of services but in fact fails to meet this standard will not be able to participate in the Scheme and cannot use the facilities provided under it, but may still operate a service along that route as long as it avoids making use of any of the facilities provided under the QPS.

23 What happens if a local transport authority does not meet its QPS obligations?

23.1 This could arise if the local transport authority fails to provide, maintain or enforce the facilities throughout the life of the QPS, as required under section 118(1)(b) of the Transport Act 2000. The local transport authority 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 may consider one or more of the three actions, depending on the facts of the case:

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

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

23.2 Section 118(2) of the Transport Act 2000 allows for circumstances where the authority or authorities are temporarily unable to provide the facilities owing to circumstances beyond their control.

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

24.1 The local transport 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, unless the procedure is modified by regulations by the Secretary of State (see paragraph 19.1 of this Guidance).

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

25.1 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 under the Scheme. 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 in section 19 of 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 possibility of modifying the procedure by regulations by the Secretary of State (see paragraph 19.1 of this Guidance)).

25.2 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 unwithdrawn objections. 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 agreeing to a variation to an existing Scheme rather than the LTA making a fresh one.

26 How do I find out more?

26.1 The DfT, working in conjunction with the Bus Partnership Forum is continuing to work to develop aids to the implementation of QPSs. Guidance on Quality Partnerships Schemes may be amended or supplemented in the future. For further information please see the relevant sections on: <http://www.dft.gov.uk/buses>

Annex 2 - Summary Checklists of ‘Facilities’ and ‘Standard of Services’ provision for a QPS

Facilities

The definition given in section 114(5) of the Transport Act 2000 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 Transport Act 2000 requires that the authority be satisfied that the facilities (and the provision of local services to the relevant standard):

- (a) 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*
- (b) 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 to any extent implement the policies set out in its bus strategy*’ (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.

Whilst these checklists refer 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).

Checklist 2.1 identifies examples of ‘facilities’ that a local transport authority may want to consider as part of a QPS. Among the facilities that are excluded from consideration are those to be provided under section 139 or section 140 of the Transport Act 2000. These are excluded by s114(5)(b) of the Transport Act 2000. 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 and standard of services), nor are the checklists intended to be exhaustive.

Checklist 2.1: Examples of “Facilities” which may 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 <ul style="list-style-type: none"> ▪ 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**	
<p>Real time/schedule adherence facilities</p> <ul style="list-style-type: none"> ○ 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 Bus Information Strategy requirements under sections 139 and 140 of the Transport Act 2000.

Standard of Service

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. The ‘standard of services’ specifically excludes frequencies and timings of services. Although fares are not specifically excluded by section 114 (6)(b) of the Transport Act 2000, it is accepted that the Competition Act 1998 and its restrictions on price-fixing strongly suggest that fares cannot be included within the ‘standard of services’. A checklist of potentially eligible ‘standard of services’ features is set out below.

Checklist 2.2: Potential ‘Standard of Service’ obligations which may be included in a QPS.

Standard of Service	<i>Notes</i>
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 DDA standards	<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	
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	<ul style="list-style-type: none"> - <i>Though not penalties, as these are in the remit of the Traffic Commissioner.</i> - <i>A time-based – e.g. peak/off-peak - differential may be appropriate</i>
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)	
Ticketing	
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 3 - Summary checklists of potential obligations suitable for a supporting agreement

Checklist 3.1: Potential LTA and/or LHA obligations which may be included as part of a supporting agreement

NB Supporting agreements must always be drafted with legal advice. In particular competition law provisions must not be infringed.

Obligation	Notes
Journey Speed Target	<ul style="list-style-type: none"> - <i>May be specified as a round trip time</i> - <i>Specific steps which an LTA will take to try to meet speed targets could be itemised.</i>
Minimise Impact of road works	<i>Details of what steps will be taken to do this could be itemised</i>
Provide advance notice of roadworks and estimates of delay	
Call answering targets	
Bus based monitoring of operators performance	
Punctuality improvement plan	
Staff training	
Customer care – security, ‘welcome host’ buddying	
Customer contact point – web, phone and face-to-face	
Customer charter package	
Marketing deals – customers and staff	
Mystery shopper surveys	
Use of LTA facilities by operators	<i>Facilities other than those included under the QPS. For example, staff facilities at bus stations.</i>
Funding packages	
Access to partnership organisations	
Business support services	
PR support	

Checklist 3.2: Potential operator obligations which may be included as part of a supporting agreement

Obligation	Notes
Participate in any agreed Real Time Information Scheme	<i>Operators may agree to standards above and beyond the requirements of 139 and 140 of the Transport Act 2000 as part of an agreement, or under the QPS</i>
Provide accurate and up to date service information to passengers	
Promote multi-operator tickets	
Promote the use of services	
Network stability commitments	
Minimum Frequencies for Specified Periods	
Buses to stop at every relevant stop	<i>To be detailed</i>
Accept specified all-operator tickets	
Work with Local Authority on Customer Satisfaction Surveys	
Provide data to Local Authority on aggregate patronage changes	
Reinvestment of revenue gains	<i>As specified</i>
Regular investment in fleet on other corridors	
Promote workplace travel	
Operator to agree to provide data to Local Authority on Journey times & reliability	<i>Subject to appropriate Data Sharing Agreement and Freedom of Information Act</i>
Operator to agree to the publication of service reliability stats	
Provide LA with agreed notice of change to Service	<i>Using Service Stability Code of Conduct</i>
Punctuality Improvement Plan	
Reasonable access to QPS bus services for QPS promoter	

Checklist 3.3: General provisions potentially to be included in a supporting agreement

General Provisions	Notes
Provisions for consequences of breach of supporting agreement	<i>Financial penalties cannot be imposed as these are unenforceable under contract law, although amounts which represent a genuine attempt to pre-estimate loss caused to a party on the occurrence of certain breaches might be. Both Parties must consult their own lawyers in drafting supporting agreements.</i>
Termination provision	<i>A supporting agreement might be stated to last for the term of any QPS and then be terminated on notice by either party, and on notice at any time if the other party breaches a major obligation under the contract. Other termination mechanisms can be incorporated.</i>
Other contractual clauses	<i>Contracts might include clauses dealing with how disputes will be settled, indemnities for damages caused by breach, consequences of termination etc although they could be kept relatively simple.</i>