

ABERDEEN CITY COUNCIL

COMMITTEE	Enterprise, Planning and Infrastructure
DATE	22 nd January 2012
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Regulatory Regime for Local Bus Services
REPORT NUMBER:	EPI/12/281

1. PURPOSE OF REPORT

This purpose of this report is to advise members on the current regulatory regime for Local Bus Services in the UK and Scotland and to update on any proposed changes to this. The report also advises on the terms of motion for changes to this regulatory regime.

2. RECOMMENDATION(S)

It is recommended that the Committee:

- (a) Requests the Convener of Enterprise, Planning and Infrastructure to write to the Scottish Government welcoming the commencement of discussions and consultation on legislative changes to local bus services and requests continued involvement to identify improvements to legislation that will help to improve competition, grow patronage, make improvements in service quality and encourage modal shift.

3. FINANCIAL IMPLICATIONS

None

4. OTHER IMPLICATIONS

None

5. BACKGROUND/MAIN ISSUES

5.1 MOTION RAISED

- 5.1.1 A Motion was put forward at the Enterprise, Planning and Infrastructure Committee on 11th September 2012 by Councillors Yuill, Delaney and Malone requesting *“that this Council agrees to write to the Scottish Government and Aberdeen’s MSPs calling for a change in the regulatory regime for bus operators providing scheduled public services*

to introduce a 'public service obligation' which would require any bus operator providing more than 50% of the bus services in a particular local authority area to provide a basic level of bus service (including in evenings and at weekends) to communities across that local authority area".

5.1.2 The Committee requested that officers submit a report on the terms of the motion to a future meeting of the Enterprise, Planning and Infrastructure Committee.

5.2 CURRENT REGIME

5.2.1 The Local Bus Service market is governed by the Transport Act 1985 and the Transport (Scotland) Act 2001.

5.2.2 The local bus service network in Aberdeen is primarily operated on a fully commercial basis by First Aberdeen and Stagecoach Bluebird. Under the conditions of the Transport Act 1985 and the Transport (Scotland) Act 2001 operators have the freedom to set their own routes, timetables and fares. Local Transport Authorities have a duty under sections 63-64 of the Transport Act 1985 to secure the provision of public transport in its area that it deems is required.

5.2.3 Bus services in the UK were deregulated in 1986, as part of the Transport Act 1985. This created a competitive market in bus services and moved away from Local Authority operated bus services. Following the introduction of a deregulated market there is provision for two types of bus service, either commercial or subsidised. A bus operator can operate whatever commercial services they want provided that they give 56 days notice of an introduction of a service, withdrawal of a service or notification of amendments to a service to the Traffic Commissioner. The operator is also obliged to consult with the Local Transport Authority 14 days prior to registering a service or amending a service with the Traffic Commissioner.

5.2.4 Commercial services are operated without any subsidy (except for the provision of concessionary fares, through the National Concession Scheme and the mileage-based subsidy which offsets most fuel duty, known as a Bus Service Operators Grant; both of which are funded by the Scottish Government).

5.2.5 There is also no requirement for an operator to cross-subsidise services under deregulation. This is where the profits from a better paying route is used to pay for unprofitable routes.

5.2.6 If there are gaps in the commercial bus network, local authorities are able to plan and procure bus services. These are services which the local authority deems to be socially necessary, but are not commercially viable. The fares, routes and timetables on these services are set and funded by the local authority.

5.2.7 There is no direct provision for Local Authorities to dictate as to bus routes, timetables or fares as these are for commercial operators to decide. As noted above, if Local Authorities feel there are gaps in the network they can supplement the network by subsidising bus services.

5.2.8 Legislation also provides for 'Quality Partnerships'. This is where a local transport authority, or two or more such authorities acting jointly, may make a Quality Partnership scheme covering the whole or any part of their area, or combined area, if they are satisfied that the scheme will either:

- improve the quality of local services and facilities provided in the area to which the proposed scheme relates in such a way as to bring material benefits to persons using those services and facilities; or
- reduce or limit traffic congestion, noise or air pollution.

5.2.9 These can be enforced by legislation and parties required to take part. A statutory Quality Partnership (sQP) is a quality measure whereby local transport authorities can put in place schemes to improve the quality and reliability of bus services, encourage patronage growth and improve the environment by reducing levels of congestion and pollution. Through a sQP authorities can specify the quality of buses (e.g. age, Euro class, low floor, etc) and minimum frequencies (including in the evenings, early mornings and Sundays). As part of the partnership, authorities will improve the infrastructure (including bus stops and bus priority measures such as "greenways" and priority junctions).

5.2.10 However in most authorities Quality Partnerships are entered into voluntarily, as is the case in our region. An initial voluntary agreement was set up in 1998 between Aberdeen City Council, Aberdeenshire Council, First Aberdeen and Stagecoach Bluebird. In 2007 Nestrans joined the agreement and a revised partnership agreement was issued in 2010. Currently all partners work together to deliver the targets set in the agreement. A copy of which can be viewed at http://www.aberdeencity.gov.uk/web/files/PublicTransport/bus_quality_partnership.pdf

5.2.11 As part of the Transport (Scotland) Act 2001 legislation allowed for 'Quality Contracts'. This is where a local transport authority, or two or more such authorities acting jointly, may make a Quality Contract scheme covering their area, or combined area, if they are satisfied that:

- making the proposed scheme is necessary for the purpose of implementing their relevant general policies in the area to which the joint scheme relates; and
- the proposed scheme will implement those policies in a way which is economic, efficient and effective.

5.2.12 A Quality Contract is a franchise type arrangement and gives a transport authority more control than can be achieved through a statutory Quality Partnership. Under a Quality Contract authorities are able to determine what local services should be provided and specify routes, the standard and quality of services and fares. Local transport authorities can introduce a Quality Contract for a particular area if they can demonstrate that such a contract is necessary in order to implement their local transport policies.

5.2.13 The introduction of a Quality Contract is very complex. The authority would have to be able to demonstrate that the services provided by the commercial bus operators were not meeting the requirements of the local transport strategy. In addition, as the authority would tender for services there would be a requirement for a substantial budget to cover the costs of implementation. Any authority would likely face legal action from the commercial operators and a robust case would be required. The take up of Quality Contracts in the UK has been virtually non-existent.

5.3 COMPETITION COMMISSION REPORT

5.3.1 The Competition Commission undertook an investigation into local bus service markets and published a report into the local bus industry in December 2011 setting out comprehensive measures which it believes will ensure that passengers benefit from greater competition.

5.3.2 In its final report, the Competition Commission confirmed that in many areas bus operators face little or no competition, leading to passengers facing less frequent services and, in some cases, higher fares than where there is some form of rivalry.

5.3.3 The Competition Commission found that despite there being about 1,245 bus companies in England, Scotland and Wales carrying 2.9 billion passengers a year, the five largest operators (Arriva, FirstGroup, Go-Ahead, National Express and Stagecoach) carried 70 per cent of those passengers. The Competition Commission also found that head-to-head competition between operators is uncommon and that on average the largest operator in an urban area runs 69 per cent of local bus services.

5.3.4 The Competition Commission identified a number of factors that restrict entry and expansion into local areas by rivals and otherwise stifle competition.

5.3.5 The Competition Commission set out a number of remedies which it believes will open up competition. The remedies included the following:

- Increasing the number of effective multi-operator ticketing schemes, by giving Local Transport Authorities additional powers to introduce

and reform schemes on terms that make them effective and attractive to passengers. Recommendations were also put forward for changes to the Ticketing Block Exemption to assist this process.

- Introducing restrictions on bus operators making changes to service frequency to discourage 'over-bussing' and other short-term actions to destabilise competitors and recommending that Traffic Commissioners introduce and enforce a Code of Conduct to prevent unacceptable behaviour. It was also recommended that Traffic Commissioners be given powers to introduce temporary restrictions on service changes when municipal operators are subject to a sales process to preserve future opportunities for competition.
- Ensuring that new entrants and competing operators can get access to bus stations managed by other operators on fair, reasonable and non-discriminatory terms.
- Recommending that the Department for Transport (DfT) update its best practice guidance for Local Transport Authorities on tendering for supported services and that the Scottish and Welsh Governments develop suitably tailored guidance to enable Local Transport Authorities to maximise the value for money obtained through the tendering process and to be given power to obtain information about services being deregistered with the right to disclose information in such detail as they consider appropriate, having regard to its nature, to potential bidders for subsequent tenders.
- Recommending that the Office of Fair Trading (OFT) applies a high priority to identifying bus mergers between competing operators, takes a cautious approach in exercising its discretion not to refer small mergers and updates its competition guidance for the industry. It is also expected, following publication of this report, that local bus operators will review their competition compliance training, making use of the guidance available to them, and impress upon their employees that real competition compliance is an important part of the culture of their organisation.
- Recommending that Local Transport Authorities consider the potential for tailoring partnerships between Local Transport Authorities and operators as a means of increasing competition within their local areas. The OFT to establish a regular forum with Local Transport Authorities and other stakeholders to ensure that such partnerships are subject to effective competition scrutiny.
- Recommending that the DfT, as part of its review of the Bus Service Operators Grant in England, looks at ways to incentivise operators to participate in the above measures. This recommendation may also be of interest to the Scottish and Welsh Governments should they decide to undertake a similar review.

5.3.6 The Competition Commission has subsequently taken formal steps to introduce an Order ensuring equal access to bus stations and

requested that the DfT, Scottish and Welsh Governments and the OFT take forward its other recommendations.

- 5.3.7 It is envisaged that following these recommendations improvements in competition will start to be realised and improvements can be achieved for passengers.
- 5.3.8 In February 2012 the Council wrote to both the Department for Transport and the Scottish Government noting that Aberdeen City Council believed that an increase in competition in the bus market and the opportunity for other operators to successfully operate in an area, such as Aberdeen, where there is a clear dominance by one operator, would only serve to improve the local bus services in the City. The letter also noted that the Council supported the recommendations and remedies set out by the Competition Commission in its Local Bus Services Market Investigation and urged the Scottish Government to take note of these findings and encourage their implementation fully into legislation without delay.
- 5.3.9 In Aberdeen in recent years competition has increased with Stagecoach Bluebird operating increased frequency services and new services in the City which do directly compete with services provided by First Aberdeen, thus affording passengers a choice who to travel with.
- 5.3.10 The Council also since the report approved a Fares and Ticketing Strategy. As part of the strategy there was a commitment between Nestrans, Aberdeen City Council, Aberdeenshire Council, First Aberdeen and Stagecoach Bluebird to work on implementation of integrated ticketing. This would allow passengers to commute on different operators services with one ticket or smartcard. This will continue to be progressed through a partnership approach.

5.4 BUS POLICY PAPER

- 5.4.1 Following the Competition Commission report Strathclyde Passenger Transport (SPT) put together a paper on improvements for the regulation of bus services.
- 5.4.2 The Scottish Government is also currently looking at areas of bus legislation with the aim of identifying improvements to legislation that will help to grow patronage, make improvements in service quality and encourage modal shift. These proposals largely follow those put forward by SPT, but have not been formally determined to date.
- 5.4.3 Aberdeen City Council, Aberdeenshire Council and Nestrans have put together a joint response to these proposals.
- 5.4.4 The main points of the proposals are as follows:

1. To allow Public Transport Authorities (PTAs) – like SPT – to secure (or provide) bus services where there is clearly a need, even if it may be in conflict with the perceived commercial view of the operator.
2. The payment of Bus Services Operators Grant (BSOG) for new or varied registered mileage should only be made where that registration has been confirmed as not operating to the detriment of overall provision in that area.
3. Public Transport Authorities should be given powers to require compulsory participation in ticketing schemes that they may introduce in their areas.
4. The modifications to provisions on Statutory Quality Partnerships introduced in England and Wales in the Local Transport Act 2008 should also be introduced in Scotland.
5. The minimum period a service should operate as registered should be increased to 180 days. In addition, regulations should be made in accordance with S.46 of the Transport (Scotland) Act 2001 restricting dates on which local services may be varied in local areas.
6. Consideration should be given to compliance inspectors vehicle inspection engineers employed by PTAs who would be trained and certified to Vehicle and Operators Services Agency (VOSA) standards, being given relevant powers equivalent to VOSA officers.
7. The Traffic Commissioner should consider not accepting local service registrations submitted by Community Transport groups (S.22 permit holders) unless the registration is supported by the PTA and the group is registered on the Community Transport database. Additionally, a date should be set for the revocation of all existing Community Bus permits which may then be re-issued subject to application and compliance with minimum standards.
8. Where a bus operator enjoys an effective monopoly and may be seeking subsidy from the PTA, the PTA should be given access to service cost and revenue figures to satisfy themselves that the operator is not seeking excessive subsidy costs or acting in an anti-competitive manner.
9. Electronic Bus Service Registration (EBSR) to become the mandatory format for submitting bus registration particulars by 2014, and those submissions are not accepted without the PTA acknowledging receipt of such information as prescribed in regulations.

5.4.5 A copy of the joint response to these proposals can be found attached at Appendix 1.

5.4.5 It is expected that these recommendations will be put out for wider consultation soon. Some of these may bring about improvements to competition and the general operation of bus services.

5.5 COMPETENCY OF MOTION

5.5.1 In terms of the Motion which has been put forward there are a number of options open to Local Authorities to improve bus services in their region as can be noted from above. Quality Partnerships are often the easiest to implement and in the North East we have a fully functioning voluntary agreement.

5.5.2 Quality Contracts could be introduced in order that the transport network fully reflects the needs of the community and region. However, as aforementioned, these can be difficult to implement and would not be advisable given the current financial climate. It is also arguable that the requirement and policies under our transport strategy are on the whole well met through existing partnership working arrangements.

5.5.3 The Motion requesting that operators are required to provide a 'public service obligation' of basic service level is not in the spirit of current legislation, which allows for an open market. If an operator is not providing what is deemed to be an adequate service in an area there is nothing to stop another operator running a service, or indeed a local transport authority supporting a bus service to improve the provision.

5.5.4 The imposition of the public service obligation would be against free competition and may deter competition in areas, as if an operator is obliged to provide a certain level of service this would likely deter another operator from deciding to run a competing service. This would effectively result in a regulated market.

5.5.5 There would also be a requirement for greater Local Authority involvement to ensure that operators were providing a basic level of service. It would also have to pre determined what a basic level of bus service is.

5.5.6 It is recommended that following the Competition Commission report and ongoing discussions regarding changes to legislation regulating bus services that the Council instead writes to the Government encouraging legislative changes which will help to increase competition, grow patronage, make improvements in service quality and encourage modal shift rather than requesting the Scottish Government to introduce a 'public service obligation'.

6. IMPACT

- 6.1 A key aim of the Community Plan is to ensure that all citizens have access to a range of transport options that reflect differing needs of age, gender, disability and income. The Single Outcome Agreement items 1,2,10, 12 and 14 also set out a priority of delivering local and regional transport strategy objectives that improve the public transport network.
- 6.2 The Smarter City document sets out that we will provide and promote a sustainable transport system, including cycling, which reduces our carbon emissions.
- 6.3 The Planning and Sustainable Development Service Plan sets out that we will have an effective and efficient Public Transport Unit. It is a priority of the Council's Five Year Business Plan that Aberdeen has a fully integrated transport network.
- 6.4 This report may be of interest to the public as the citizens of Aberdeen have a vested interest in the public transport network and accessibility to services.

7. BACKGROUND PAPERS

- Transport Act 1985
- Transport (Scotland) Act 2001
- SPT Committee Report, Proposals to seek variations to the existing provisions to improve the co-ordination and delivery of bus services, March 2012
- Bus Policy Paper (ATCO) June 2012

8. REPORT AUTHOR DETAILS

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Appendix 1

SPT Policy Proposals on the regulation of buses – North East Response

10. To allow Public Transport Authorities (PTAs) – like SPT – to secure (or provide) bus services where there is clearly a need, even if it may be in conflict with the perceived commercial view of the operator

North East response: This proposal could be helpful as situations do arise where supported services could be operated to the benefit of the travelling public but would, under the current legislation, be deemed anti-competitive. Clear parameters would have to be set as to what is deemed appropriate and these would need to be consistent across the whole country. Care would have to be taken so as not to undermine commercial services and full consideration would also need to be given to how this proposal fits within competition legislation and State Aid rules.

The implications of this proposal on the PTAs needs to also be fully considered, particularly the financial implications of providing such bus services and the consequences of raising the expectation that transport authorities will 'step in' under such circumstances. In the current climate subsidy of bus services is under significant pressure and in Aberdeen City there are currently no subsidised bus services. Having said that, the opportunity to secure services where there is a need and a full assessment of the implications has been carried out would be positive.

11. The payment of Bus Services Operators Grant (BSOG) for new or varied registered mileage should only be made where that registration has been confirmed as not operating to the detriment of overall provision in that area.

North East response: We question how this would work in practice and whether it could encourage higher bus fares and/or reduction in services. This proposal would give a high level of responsibility to the PTA who would be open to challenge from bus operators. Decisions would have to be justified and consistent and very specific guidance / regulations would need to be produced.

12. Public Transport Authorities should be given powers to require compulsory participation in ticketing schemes that they may introduce in their areas.

North East response: LTAs have powers under the Transport (Scotland) Act 2001 to introduce statutory schemes mandating operator participation. However, revised legislation providing for the easier introduction of effective schemes would be welcomed. The Competition Commission's recommendations to the Scottish Government to give LTA powers to determine multi-operator integrated ticketing schemes in more detail are a step in the right direction however, as proposed, do not vest any absolute control of ticket price with a transport authority. PTAs and bus operators should always try to reach agreement and implementation in a voluntary and mutually agreeable manner in the first instance. Powers to require compulsory participation may not achieve the benefits outlined by SPT if there is no significant influence/control over the price of the ticket. In such instances the operators would ultimately still have power over matters which can result in the success or failure of the scheme, primarily ticket price.

13. The modifications to provisions on Statutory Quality Partnerships introduced in England and Wales in the Local Transport Act 2008 should also be introduced in Scotland.

North East response: Any amendment to the legislation which would permit quicker and easier implementation of a sQP would be potentially helpful. Under Scottish legislation minimum frequencies along with other service standards can be specified but not maximum frequencies, the timing of services and fare levels. The ability to prescribe timings in a sQP would, we feel, bring benefits. The current financial climate within local authorities may however restrict implementation of such schemes in the near future.

In the North East a good voluntary partnership has developed and works well. At this point in time, this is the most appropriate mechanism, however one size does not fit all and we agree that there are benefits of having the appropriate legislation in place to enforce this when it doesn't work. Care should however be taken that this is not seen as a threat that could undermine the success of existing voluntary partnerships.

14. The minimum period a service should operate as registered should be increased to 180 days. In addition, regulations should be made in accordance with S.46 of the Transport (Scotland) Act 2001 restricting dates on which local services may be varied in local areas.

North East response: This would be welcomed as any longer registration period and fixed dates for registration changes would bring greater stability to the network and ease of information provision. It would certainly give the passengers consistency and more confidence in the service and would have time and costs benefits for the local authorities too. However, as an operator of supported services, local authorities can benefit, just as a commercial operators do, from changing services at relatively short notice to respond to unforeseen local circumstances. To achieve the anticipated benefits it would be essential that short notice registration changes are minimised and strict control maintained over their acceptance. Service changes outwith fixed dates (e.g. a reduction in service to coincide with University vacations) should be retained however these service changes should be, whenever possible, pre-determined when submitting the relevant registration.

15. Consideration should be given to compliance inspectors vehicle inspection engineers employed by PTAs who would be trained and certified to VOSA standards, being given relevant powers equivalent to VOSA officers.

North East response: PTA vehicle inspection engineers, where employed, can preclude the use of un-roadworthy vehicles from services procured by the authority, Regarding commercial bus services, we feel that as VOSA is already empowered as the regulatory body to undertake such inspections it is unnecessary for the transport authority to incur additional costs to address issues of vehicle quality. If an operator has unsuitable maintenance / vehicle standards, VOSA checks should identify this and if they are considerable then they will be called to public enquiry.

16. The Traffic Commissioner should consider not accepting local service registrations submitted by Community Transport groups (S.22 permit holders) unless the registration is supported by the PTA and the group is registered on the Community Transport database. Additionally, a date should be set for the revocation of all existing Community Bus permits which may then be re-issued subject to application and compliance with minimum standards.

North East response: Whilst fully acknowledging the importance of safety across the Community Transport sector, we are not clear how the proposed actions will address the difficulties identified by SPT. VOSA and the Traffic Commissioner should retain full responsibility for the issue of Section 22 permits and registration of local bus services under this means. The long awaited code of practice on issuing of related Section 19 permits following the review of designated issuing bodies would be welcomed.

17. Where a bus operator enjoys an effective monopoly and may be seeking subsidy from the PTA, the PTA should be given access to service cost and revenue figures to satisfy themselves that the operator is not seeking excessive subsidy costs or acting in an anti-competitive manner.

North East response: This proposal seems reasonable however it is not clear from the SPT proposal how the provision of such confidential financial information will necessarily aid an authority in procuring supported services or be otherwise used to the benefit of the travelling public.

18. Electronic Bus Service Registration (EBSR) to become the mandatory format for submitting bus registration particulars by 2014, and that such submissions are not accepted without the PTA acknowledging receipt of such information as prescribed in regulations.

North East response: EBSR is undoubtedly the way forward, although 2014 would be an extremely challenging timescale for some operators. We have some concerns over the impact on smaller operators who may find it difficult to implement this. These are the organisations we wish to see registering services. Local authorities might have to operate EBSR 'back-offices' or be faced with the demise of smaller operators as market entry could be precluded. In an area of little competition such as ours this is a major consideration. It should also be noted that our experience to date is that EBSR has not on all occasions led to an improvement in data quality. The proposal that EBSR submissions should not be accepted without appropriate acknowledgement from the transport authority is therefore essential. In addition to the SPT proposals, it should also be mandatory that operators provide transport authorities with one EBSR file per service, where the service is registered to operate under domestic rules by means of 'split registrations'.