

Proposals to seek variations to the existing regulatory provisions to improve the co-ordination and delivery of bus services

Committee Operations

Date of meeting 9 March 2012

Date of report 1 March 2012

Report by Assistant Chief Executive (Operations)

1. Object of report

- 1.1 The object of this report is to seek approval for SPT's proposals to seek variations to the existing regulatory provisions to improve the co-ordination and delivery of bus services – attached at Appendix 1 - and their dissemination to the Scottish Government and other relevant organisations.

2. Background

- 2.1 At its meeting on 10 February 2012, the Partnership approved a report entitled 'Competition Commission (CC) Inquiry into the Local Bus Market: Final Report and Next Steps for SPT'. The paper outlined the CC's decisions, their impact on SPT's work, and that officers would continue to develop SPT's proposals for an improved bus policy, including taking account of the CC's decisions.

3. Proposals

- 3.1 SPT has been liaising with council officers, other RTPs, the Confederation of Passenger Transport (CPT), operators, and other agencies, in addition to Transport Scotland, to promote SPT's views on bus. Furthermore, additional work has been undertaken to flesh out the actions required therein, taking account of market changes or other factors, including, for example, the CC's Inquiry.
- 3.2 The outcome of this further development can be summarised as follows:
 - 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.
 - The payment of Bus Service 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.

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

3.3 SPT has invested significantly in providing high quality infrastructure to stimulate and improve the bus market and continues to do so. Our 5 year Capital Programme has included:

Projects	Cost £m
Bus station developments	£8.4
Bus Infrastructure (shelters, stops, roads and signals)	£19.6
Quality Bus Corridors	£4.8
Real Time Passenger Information	£3.0
New small fuel efficient buses	£5.3
Ticketing systems	£1.8
Public transport Interchanges	£4.3
Total	£47.2

Even with this investment and quality operators benefiting from SPT's commitment, to create the required 'step change' in the overall provision of the delivery of bus services requires changes to the existing regulatory regime as noted in the proposals.

3.4 These suggestions, if adopted, would positively impact across a range of themes, including:

- Providing a more consistent, passenger focused, integrated bus network
- Providing opportunity for PTAs to ensure best value for public money in securing subsidised services
- Creating a far more secure bus network
- Improved information for passengers, and a more efficient method of receiving that information, thus reducing cost to public purse
- Safer buses on the roads
- A stronger community input to the transport sector
- Better targeting of public funds where they are needed most
- A more attractive, seamless, convenient ticket offering for passengers
- A workable mechanism to achieve a higher quality bus network
- A more co-ordinated approach to network planning and development.

3.5 Most importantly, implementation of these suggestions would lead to significant improvements in the provision of bus services in communities across Scotland.

4. Committee action

4.1 The Committee is recommended to:

- Approve SPT's proposals for additional bus powers attached as Appendix 1 and their dissemination to the Scottish Government and other relevant organisations.

5. Consequences

Policy consequences	<i>In line with Regional Transport Strategy and SPT's Proposals for an Improved Bus Policy in Scotland.</i>
Legal consequences	<i>Implementation of some of these proposals would require changes to legislation.</i>
Financial consequences	<i>None at present.</i>
Personnel consequences	<i>None at present.</i>
Social Inclusion consequences	<i>Implementation of these proposals could have a significant positive impact on communities across the SPT area.</i>

Risk Consequences

None identified at present.

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For further information, please contact Bruce Kiloh on ext 3740

Enc: Appendix 1 – 'Proposals for additional powers/regulations to assist Public Transport Authorities in securing an integrated, comprehensive bus network to better serve communities across Scotland'

Proposals for additional powers/regulations to assist Public Transport Authorities in securing an integrated, comprehensive bus network to better serve communities across Scotland.

- 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.**

Current position:

- PTAs have powers to secure bus services they deem socially necessary to meet the needs of communities in their respective areas.
- Operators fundamentally structure their bus services to generate an operating margin, (i.e. they focus on the most profitable routes), meaning some communities are often bypassed by bus services if the operator feels they will not deliver a significant profit.
- Current legislation¹ limits PTAs to only provide those services which otherwise would not be commercially viable for a private operator, and where commercial services would not be unreasonably affected.
- This can lead to PTA's being reluctant to secure a service for fear of legal challenge on the grounds of interfering with the commercial market, and PTA-secured services being unattractive to users or potential contractors through having contrived, fragmented or circuitous routes, and restrictions imposed on them e.g. passenger eligibility.
- This current position may not be in best interests of passengers or communities and in reality serves to maximise profit and revenue for commercial operators.

Required action:

- ***Modify legislation so that PTAs simply have a power to secure those services they consider necessary to meet the requirements of their area.***
 - ***Modify Transport Act 1968 - S.9A(1) to read '...within their area' and delete S.9A (4)(a).***
 - ***Modify Transport Act 1985 - S.63 (2)(a) to read '...within their area' and delete S.63(5)(a).***

Benefits:

- PTAs able to design and secure 'whole' routes that better reflect the travel patterns of their communities.
 - Commercial operators more likely to consider the consequences of their operations if, when maximising profit, they may precipitate the introduction of a subsidised competitor thereby reducing their income.
 - Operators likely to more closely align commercial services to the network aspirations of PTAs.
 - In addition, when bidding for any subsidised transport element additional to a commercial service, the possibility of competition over the whole route would moderate bids by the incumbent.
- 2.) **The payment of Bus Service 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.**

¹ S.9A of the Transport Act 1968 and S.63 of the Transport Act 1985,

Current position:

- Currently, BSOG is paid to all operators of registered local bus services, irrespective of the value that each service may provide to the passenger. As a result, the BSOG 'subsidy' can, in some cases, contribute towards wasteful or predatory services that may also, in the longer term, affect the viability of other services and incur additional public subsidy.
- Examples include the registration of duplicated journeys several minutes ahead of a competitor, rather than splitting headways, the registration of journeys only at profitable times abstracting from a more comprehensive provision, and registering journeys over subsidised services in the short-term to potentially and allegedly 'game' the award of contracts.
- Such tactics are legal, but in a time of severe economic restraint it is considered that efforts should be made to target public subsidy more effectively.

Required action:

Each bus registration should be evaluated by the relevant PTA to consider whether it would stimulate passenger growth or whether it is merely a predatory registration to abstract passengers from a previously registered bus route, and in particular with regard to the timing of bus provision on the route. BSOG should not be paid for mileage that brings no public benefit or does not stimulate the bus market in a sustainable way.

Benefits:

- The positive impacts of this action for passengers would be a more effective, integrated and complementary provision of bus services in their area.
- The withholding of BSOG for other than beneficial service provision to passengers would discourage bus operators from indulging in 'wasteful' competition.
- When combined with the suggestion that registrations operate for a minimum 180 days, the measures would be a significant disincentive to predatory behaviour.
- Additionally, the BSOG subsidy would be targeted to maximise benefit to the passenger, rather than the operator.

3) Public Transport Authorities should be given powers to require compulsory participation in ticketing schemes that are introduced in their areas

Current position

- Whilst PTAs currently have power to introduce Ticketing Schemes they can only do so following the failure of operators to introduce Ticketing Arrangements
- Any Ticketing Scheme or Arrangement can be frustrated by bus operators who may determine the price of the ticket and apply a high premium, rendering the ticket uneconomic to the user.
- Operators of registered local bus services are currently required to participate in the National Concessionary Travel Scheme ticketing arrangements.

Required Action:

- ***Adopt the recent remedy recommendations for multi-operator tickets of the Competition Commission's investigation into the bus market.***

Benefits:

- Attractive integrated ticketing for the passenger stimulating growth.

- This action would address the anti-competitive aspects of dominant operators.
- It would reduce the perceived fragmentation of bus services in some communities, providing more seamless, attractive, convenient ticketing arrangements.

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.

Current position

- S. 3 of the Transport (Scotland) Act 2001 limited the ability of PTAs to prescribe the operation of services in an SQP.
- The process of introducing an SQP is protracted.
- The PTA requires to invest significant capital monies prior to the introduction of any SQP when the outcomes of the mechanism are uncertain.
- There is no significant sanction to ensure compliance

Required Action:

- ***Provisions of Transport (Scotland) Act 2001 should be relaxed to permit the specification of maximum frequencies/timings in SQPs as per Local Transport Act 2008***
- ***PTAs should be permitted to define 'registration criteria' to prevent the provision, variation or withdrawal of services in an SQP area. The Traffic Commissioner would determine whether to accept specific registrations/variations/cancellations by reference to these criteria***
- ***Consideration should be given to fines or reduction in BSOG for non-compliance with SQP undertakings***
- ***Consideration should be given to the establishment of an adjudicator, or board, to consider admissible objections to the making of an SQP. This would reduce the likelihood and costs of delays associated with operators seeking to frustrate the introduction of an SQP to which they are unable or unwilling to commit***

Benefits:

- A higher quality bus offering for passengers across communities where SQPs are implemented
- SQPs would become easier to implement
- PTAs would be encouraged to introduce SQPs as outcomes are more assured.

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.

Current position:

- In Scotland, a bus service must operate, as registered, for a minimum period of 90 days².
- Operators can introduce, vary or withdraw registrations at any time, subject to minimal notice requirements.
- Operators often seek to modify registrations simply to gain a temporary advantage over a competitor.
- This can lead to excessive change in bus service provision creating consumer confusion and loss of confidence in network stability.

² This condition, in addition to the 70-day notice requirement, contributed to the reduction in service changes in the SPT area from 1300 per year to around 900.

- Railways, express buses and ferry companies generally adhere to two timetable changes per year at recognised times.

Required action:

- ***Amend time period for which a service is required to operate from 90 days to 180 days.***
 - ***S.45 of the Transport (Scotland) Act 2001 to be amended and regulations under S. 46 of to be made to restrict the dates on which services may be varied to no more than 4 dates a year.***
- ***Acknowledging that there are often unforeseeable circumstances which require a quick change, there should be an added requirement that application to the Traffic Commissioner to register, vary or withdraw services at short notice must be accompanied by support from the public transport authority.***
 - ***Amend S. 6(2) of the Transport Act 1985 to reflect this requirement.***

Benefits:

- The above actions would yield significant benefits for customers. Greater network stability, improved reliability of service for customers, and more consistent information, with a longer 'shelf life.
- A reduction in the ability of bus operators to introduce short-term modifications to services to deter competition through over-bussing or head-running.
- A reduction in cost to the public purse through less network changes or requests for subsidy for withdrawn or varied services.

6.) 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.

Current position:

- SPT currently employs vehicle inspection engineers and compliance inspectors to monitor the quality and operation of vehicles and services provided by bus operators under contract to SPT. This monitoring is undertaken primarily to protect the safety of passengers and other road users and ensure legal compliance.
- In addition, compliance officers note the operation of all local services and advise the Traffic Commissioner of observed breaches in relevant regulations, in accordance with an agreed protocol.
- Whilst carrying out monitoring, staff are often able to identify deficiencies in service operation with potentially serious implications and whilst prohibitions can be issued to operators and against vehicles contracted to SPT, they are unable to take any action with regard to the commercial services providing the majority of the bus network.
- Currently such inspectors are only able to advise the operator and vehicle inspectorate of potentially dangerous situations.
- It is suggested that, subject to training and accreditation, Inspectors employed by PTAs be given powers to inspect and prohibit vehicles commensurate with those of VOSA.

Required action:

- ***A training and certification scheme for inspectors and engineers employed by PTAs such as SPT to be established such that actions taken by them and evidence submitted to the Traffic Commissioner is deemed compliant with regulations and requirements. Legislation may be required to legally empower officers.***

Benefits:

- The primary benefits of this action would be safer vehicles on the roads for use by the travelling public, and a more effective reporting regime.
- Empowering inspectors employed by PTAs such as SPT would significantly increase the resources currently deployed on ensuring the safety and legality of bus operations in Scotland thereby maximising the effectiveness of the work of the Traffic Commissioner, who only has a small number of staff dedicated to this task at the current time.
- These additional monitoring resources will encourage bus operators to be more aware of, and adhere to, the legal and safety requirements of bus operation in Scotland.
- Currently, when operators are called to public inquiry by the Traffic Commissioner, the Commissioner may call on evidence provided by SPT staff. Much time and effort is taken up at enquiries proving the competence and jurisdiction of inspectors or engineers employed by SPT, whilst such issues are seldom raised with regard to VOSA inspectors. By certifying and empowering the PTA inspectors the business of any public enquiry can be expedited more efficiently

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 quality standards.

Current position:

- Recent decisions offering BSOG to services operated by Community Transport groups and changes in powers of Community Transport Providers under the Local Transport Act 2008 (payment to drivers) are likely to encourage Community Transport groups to register and operate local bus services.
- Such measures are broadly welcome, especially in more remote areas where conventional bus services are likely to be uneconomic, but concerns exist over the governance and technical proficiency of some groups and the possibility that some registrations may affect the viability of mainstream marginal bus services, leading to their withdrawal.
- Operating costs of Community transport, along with overheads are invariably lower than conventional bus services. The maintenance regimes and vehicle standards are less onerous than those expected from the holders of PSV operators licences and often grants towards the purchase of vehicles by councils or other bodies has helped defer costs.
- Historically, S. 22 permits have been granted without time limit to groups that may have changed significantly in governance, personnel and ability since the grant. Regulations under the Local Transport Act 2008 imposes a duty on Traffic Commissioners to maintain a database of permits granted and limits the duration of new permits to 5 years.
- This enables a periodic quality check to be carried out and therefore will go some way to addressing concerns over quality. Existing permits should be revoked from a given date and re-issued where appropriate, ensuring existing permit-holders are also suitably qualified.

Required action:

Most of the necessary legislation for this proposal is in place. Regulations requiring the Traffic Commissioner to maintain records of permits issued and the time-limited nature of these new permits have already been made. A further regulation does, however, require to be made identifying a date when all previous permits should be revoked. Holders of these permits would then be required to re-apply for time-limited permits.

SPT would be willing, on behalf of the Traffic Commissioner for Scotland, to establish and maintain the database of all S.19 and S. 22 permits issued.

Benefits:

- The principal benefit in this proposal is in raising the quality and safety of community transport provision through the establishment of minimum acceptable standards for community transport, and regular review and monitoring of the proficiency of groups seeking to provide such services.
- PTAs, like SPT, see community transport providers as an essential part of the future of public transport provision, especially in times of financial constraint, and improved standards will encourage PTAs to partner these providers in improving services in their areas, further stimulating the community transport market.
- The requirement for the Traffic Commissioner to maintain a database of permits issued will assist in the monitoring of the sector, and the revocation of existing permits would necessitate their renewal providing a complete database of all groups.
- The increasing likelihood of community transport registering local services does, however, raise concerns that they may in some circumstances compete with mainstream provision. Thus, requiring all S. 22 permit holders to have applications to register services endorsed by the PTA, should reduce such conflicts.

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.

Current position:

- Bus operators enjoy an effective monopoly in many areas of Scotland. Such monopolies can often result in alleged 'gaming' by companies, which could be perceived as being simply to extract further monies for profit from PTAs on contracted routes.
- This can result in operator's undertaking market manipulation, service reduction or variation (and subsequent request for public subsidy to replace), high fares, reduced frequencies, and predatory behaviour against other operators
- The PTAs only method of addressing this is through service subsidy or the introduction of a Quality Contract (QC), which, to date, not one PTA has introduced due to the complexity involved.

Required action:

- ***Where an operator enjoys an effective monopoly (for example, over 75% of market in an area), and the PTA considers that this could result in excessive subsidy from the public purse, the operator should be placed under a duty to detail costs, income and profit margins of relevant contracting depots.***
- ***This 'open book' approach would permit an assessment of whether the operator is abusing a monopoly position and whether action to address this is warranted.***
- ***The PTAs request for information would be subject to approval from an arbitrator e.g. Traffic Commissioner or Scottish Ministers.***
- ***Any information supplied to PTAs under this proposal would remain confidential and subject to similar conditions detailed in S.43 of the Transport (Scotland) Act 2001.***

Benefits:

- PTAs would be better informed about operation, income and therefore subsidy requirements of services in their communities, assisting the assessment of potential remedial measures.
- Operators would be less inclined to seek higher subsidy for providing a PTA-secured service enabling better use of PTA's limited financial resources to provide further vital services for communities across its area.

9.) 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.

Current position:

- Current system for receiving and processing registrations allows operators to submit completed registration forms in 2 formats: paper-based documents or an electronic copy, meaning separate processing regimes with consequent costs.
- This 'double' processing regime can lead to confusion, 'grey areas' and additional costs for the PTA and the Traffic Commissioner, all in all potentially resulting in poorer information being provided to the customer.

Required action:

- ***The Traffic Commissioner would require to advise operators that applications for registration, variation or cancellation of local service details should be submitted in the EBSR format from a given date e.g. 2014.***
- ***No submission should be accepted by the Traffic Commissioner unless it has been formally receipted by the PTA in accordance with the prescribed timescales.***

Benefits:

- By requiring that all registrations, variations and cancellations are submitted through EBSR, significant savings could be made in resources required to process and record the information
- Furthermore, this will create a more robust, resilient, auditable system of service registrations with a clear, electronic information record.
- This would result in an immediately accessible, comprehensive database of services to assist planning and emergency services.
- Lastly, but most importantly, there would be huge benefits for the travelling public through the provision of up-to-date information.

10) The Public Service Vehicles (Registration of Local Services)(Scotland) Regulations 2001 should be amended such that the duty to inform the relevant authority(ies) of an application to register, vary or withdraw a bus service is replaced by a duty to consult.

Current position;

- In Scotland bus operators are required to inform Public Transport Authorities of their applications to change or introduce bus services 14 days before the application is submitted to the Traffic Commissioner.
- Following initial uncertainty the Traffic Commissioner has determined that the information submitted to the PTAs must be a copy of the completed registration particulars.
- The period between submitting information to the PTA and submitting the registration documents to the Traffic Commissioner enables the Authority to identify any faults in the documents and advise the operator of the failings. It does not permit the Authority to enter meaningful discussions on the proposals.

Required action:

S.4(1) of the regulations should be amended such that the word 'consult' replaces the word 'inform'.

Benefits:

- A statutory two-way dialogue in the period before a registration is submitted will enable the PTA to advise the operator of the likely result of the proposed service changes, the response, if any, of the PTA and, as at present, any technical faults within the document.
- The operator's knowledge of the response of the PTA may influence the final proposals avoiding the requirement to tender services, the submission of successive registration documents and excessive disruption to the passenger.
- If the proposal above in relation to payment of BSOG is adopted, this consultation will advise the operator whether the registration is supported by the PTA in benefiting and sustaining the bus market.
- Overall, this proposal will ensure that a more co-ordinated approach to network planning and development is place, which is to the significant benefit of passengers and communities.
- The current method of 'informing' implies acceptance of the proposed changes. In many cases this is not the case. Consultation strengthens the requirement for dialogue, perhaps leading to moderation, and emphasises the PTAs role in endeavouring to secure satisfactory overall provision.
- The process of consultation requires some explanation of the rationale behind the proposals. By understanding this rationale the PTA is better able to either assist an operator, or consider any appropriate response.