



Local Buses Delivering National Policies:

Options for Bus Reform

James MacGregor

New Local Government Network (NLGN) is an independent think tank that seeks to modernise public services, develop local political leadership and empower local communities. NLGN is publishing this White Paper as part of its innovative policy projects, which we hope will be of use to policy makers and practitioners. The views expressed are however those of the authors and not necessarily those of NLGN.

© *NLGN June 2007*
All rights reserved
Published by NLGN

Prepared by NLGN
First floor, New City Court, 20 St. Thomas Street, London SE1 9RS
Tel 020 7357 0051 . Email info@nlgn.org.uk . www.nlgn.org.uk

Local Buses Delivering National Policies

Options for bus reform

Introduction

Government recently signalled its intention to strengthen local government's powers over buses in *Putting Passengers First*. Government has gone on to propose some firm measures in the draft Local Transport Bill, *Strengthening Local Delivery*. The draft bill outlines new legislation that is intended to give councils greater influence over the local bus network.

The bill is subject to pre-legislative scrutiny with the consultation closing on 7 September 2007. This further period of scrutiny is designed to allow for a '*full and frank debate with the transport industry, local authorities and other interested parties*'.¹

This debate has a history. The 1985 Transport Act dramatically reduced councils' influence over buses in England outside London;² state-owned bus companies were gradually privatised and regulatory powers weakened. Private ownership and on-road competition replaced state-ownership and direct network support. The reinvigoration of an industry in decline since the 1950s was the stated objective.

1 Department for Transport, *Strengthening Local Delivery: The Draft Local Transport Bill – Volume 1: A Consultation*, (May 2007) p 87-88

2 The full terms of the 1985 Act did not apply in London. Road User Licensing was not abolished.

Government came to see some of the effects of the 1985 legislation as negative. The 2000 Transport Act reintroduced a weakened form of local bus franchising through Quality Contracts and new local partnership arrangements. The new measures were supposed to provide access to transport for all.³

In 2006 the Transport Select Committee concluded that neither the 1985 nor 2000 Acts had achieved their goals and that moving people out of their cars and onto buses was necessary.⁴ These findings coincided with Government's '*long, hard look*' at how to improve buses⁵ and Eddington's wide-ranging review of the UK's future transport needs. The draft bill is the result.

The detailed legislative proposals in the draft bill are designed to '*help secure modern, reliable and affordable bus services that are better tailored to the needs of the travelling public*'.⁶ These improved bus services are intended to encourage progress in three areas of national priority; economic development, environmental sustainability, and social exclusion.⁷

3 Department for the Environment, Transport and the Regions, *From workhorse to thoroughbred: a better role for bus travel* (April 1999), 1.1

4 House of Commons Transport Committee, *Bus Services Across the UK*, Eleventh Report of Sessions 2005-06, (October 2006), p 9

5 Department for Transport, *Putting Passengers First: the Government's proposals for a modernised national framework for bus services* (December 2006), p 29

6 Department for Transport, *Strengthening Local Delivery: The Draft Local Transport Bill – Volume 1: A Consultation*, (May 2007) p 32

7 *Ibid.*, p 24

However, the reform package is incomplete. Government plans to introduce further consultations on reforms to subsidies, local governance arrangements and local transport planning. As a result, how Government intends to achieve its objectives remains unclear. This paper outlines proposals that include reforms in all these areas.

Local Reforms for National Objectives

Underpinning the need for reform are three national political priorities that improved buses would help to deliver:

- Economic competitiveness; buses are an important part of an efficient public transport system, which is an important part of a strong and prosperous economy.
- Social inclusion; for many, buses are a social and economic lifeline.
- Environmental sustainability; better buses will mean fewer cars, leading to lower emissions.

The draft bill lays-out an agenda for reform designed to improve bus services and tackle these three policy priorities. Reforms are proposed in five areas; contracts, partnerships, community transport, punctuality & performance, and local flexibility. Proposals for reforms to subsidies, local governance arrangements and local transport planning are incomplete.

Contracts

The Quality Contract legal framework will be reformed in primary legislation. This framework was introduced as part of the Transport Act 2000, but is yet to be used by any local authority. This Act set three criteria to be satisfied before the Secretary of State approves a Quality Contract. At the moment, a Quality Contract must be the only practicable way to implement the authority's Bus Strategy, while being economic, efficient & effective, and in the public interest.

These criteria have proven prohibitive, particularly the first; no authority has been able to prove that their plan is the '*only practicable way*'. Government now considers that these arrangements place the decisions on contracts, '*at the wrong level in relation to schemes in England*'.⁸

The draft bill proposes changes to the Quality Contract regime that will lower the bar to adoption and give local authorities greater freedoms and flexibilities.⁹ The most significant of these changes are:

- The Secretary of State's approval role would be taken by a new '*Approvals Board*.' This board would consist of a Traffic Commissioner (probably the Senior Traffic Commissioner) and two assessors drawn from a panel appointed by the Secretary of State.

8 Department for Transport, *Strengthening Local Delivery: The Draft Local Transport Bill – Volume 1: A Consultation*, (May 2007) p 41

9 *Ibid.*, p 41

- The Transport Tribunal would deal with appeals.
- Contracts would be allowed to run over 10 years, extendible where public benefit can be demonstrated.
- Phasing in of new contracts allowed.
- New Guidance on Quality Contracts.
- The *'only practicable way'* test would be replaced by a new *'public interest'* test. This new test would assess the plans according to the following criteria:
 - Increases in bus patronage
 - Benefits to passengers
 - Contribution to other local authority transport plans
 - Economic, efficient and effective plans
 - In line with competition legislation
 - Inclusive of financial details

With this package, Government hopes to introduce a greater level of freedom and flexibility for local authorities to develop Quality Contract plans.

Suggestions for Reform

Retaining outside approval for Quality Contract plans continues to incentivise local government to look upwards to central government rather than outwards to local citizens. Removing this requirement would help to improve bus services by encouraging local

authorities to seek local public and stakeholder approval while tailoring bus plans to specific local circumstances. However, dispensing with independent approval removes the main lever for driving improvement. A *'public interest'* test could provide a locally-based alternative. Each individual local authority should have to prove that their plans passed their own *'Public Interest'* test. Local authorities would be required to use the Local Strategic Partnership (LSP) to consult on Quality Contract plans with local citizens, communities and the voluntary, community and private sectors, as described in the recent local government White Paper. This process would also bring coherence between bus plans and other local strategies.

Alongside passing the *'public interest'* test, local plans should also be required to demonstrate:

- Appropriate funding.
- Appropriate governance measures.
- Being in line with the authority's other transport plans.

A council's Quality Contract plans would be subject to annual review through the LSP, removing the need for an independent appeals process. Partners would be able to make representations to the LSP at any time.

Such a package would encourage local innovation and help to build trust between local transport authorities and bus providers. It would also move the legal responsibility for bus decisions to local authorities. Central government should make clear the legal position on competition.

Partnerships

The draft bill proposes reforms to make voluntary partnership arrangements between local authorities and bus operators more attractive. The scope of statutory partnerships would be widened so one partnership agreement can cover multiple operators. Voluntary partnerships will also have the same possibility.

The perception exists that new multi-operator non-statutory partnerships might run into legal difficulties. The draft bill restates the legal position on competition in the bus industry alongside a revised '*Schedule 10 test*'. Government's intention is that this test will apply in place of '*Section 9*' of the Competition Act 1998. The law presently allows partnerships that infringe on competition in certain circumstances; where a partnership decreases competition, its impact must be proportionate to its public benefit. EC Competition law would continue to apply and the revised '*Schedule 10 test*' has been drafted accordingly.¹⁰

This revised legal test would not apply to Quality Bus Partnerships. Still, Government intends to take the legislative opportunity to look more widely at the legal issues and invites comments as part of the consultation. Government proposes that Quality Partnerships would:

- Be allowed to cover minimum frequencies, timings and maximum fares, as appropriate.
- Be phased in at pre-arranged intervals.
- Replace the link to a local Bus Strategy with a link to local transport policies.¹¹

Suggestions for Reform

Government should require that all partnership arrangements are consulted on through the Local Strategic Partnership (LSP) arrangement, as with the above Quality Contract approval process. Such an approach would build into the process an assessment of whether both statutory and voluntary partnerships schemes are in the public interest by consulting widely with local providers, citizens and stakeholders. Partnership arrangements would also be subject to annual review, guaranteeing a right of redress for those affected.

10 Department for Transport, *Strengthening Local Delivery: The Draft Local Transport Bill – Volume 1: A Consultation*, (May 2007) p 36 - 40

11 Department for Transport, *Strengthening Local Delivery: The Draft Local Transport Bill – Volume 1: A Consultation*, (May 2007) p 39

Community Transport

Government sees a bigger role for community transport in the coming years as a provider of services that will satisfy the demand that commercial operators have been unable to meet. As community transport fills gaps left in private provision, Government does not see a conflict between private and community sector operators. To allow the sector to play the wider role, Government intends to remove some restrictions in the community transport regulatory regime.¹² These changes include:

- For services to the general public, allow drivers to be paid and allow vehicles of more than 16 seats.
- For services for particular educational groups and other bodies, allow the use of vehicles with fewer than nine seats, as well as larger vehicles. Also, simplify the permit issuing system so all are issued by Traffic Commissioners.

Punctuality and Performance

The proposals also intend to improve punctuality. Government perceives two serious problems with the existing regime; the first is the limited penalty powers for Traffic Commissioners. The second is that Traffic Commissioners lack powers over local authorities whose actions impact on bus punctuality.

To address these two issues, Government puts forward a number of reforms. The first set will give Traffic Commissioners more powers over local traffic authorities to require from them punctuality information and evidence for inquiries into poor performance. These measures would all support Traffic Commissioners' powers to issue an Intervention Notice as provided for in the Traffic Act 2004.

The second set would give Traffic Commissioners more enforcement powers over failing bus operators. These would allow for greater powers for Traffic Commissioners to attach performance conditions to bus operators' licenses across England and Wales.

Suggestions for Reform

Putting Passengers First suggested that local government should be brought within the scope of the Traffic Management performance regime. Doing so would require co-ordination with other performance regimes that apply to local authorities. This co-ordination should be achieved through Local Area Agreements (LAAs). Doing so would ensure that new traffic performance measures are relevant to specific local areas and drive improvement from the bottom up. This approach would be consistent with the introduction of the new Comprehensive Area Assessment regime in 2008.

This new integrated performance regime should be timed to coincide with

12 Department for Transport, *Strengthening Local Delivery: The Draft Local Transport Bill – Volume 1: A Consultation*, (May 2007) p 46

the introduction of the second wave of LAAs.

Government still suggests that devolved subsidies will be linked to the introduction of Quality Contracts. This leaves the door open for the localisation of the Bus Service Operator Grant.

Local Flexibilities

Government suggests four other changes intended to strengthen local flexibility. These are as follows:

- Taxi services will be able to obtain licences to operate as bus services.
- Local authorities will be allowed to improve existing services through subsidy as well as provided services on un-served routes.
- Extend the maximum length of bus subsidy services from five to eight years.
- Remove the need for the Secretary of State to give approval for the sale of state-owned bus companies.

Suggestions for Reform

Devolving subsidies and routing them through LAAs can give central government the assurance it needs on their use while introducing local flexibility. Negotiated agreements tailored to each local area's needs would avoid devolving subsidies in the same way in every part of England. This approach would allow for the pooling of priorities and funding across the local state and coordination with local private and third sector partners.

However, greater local discretion does not mean less influence for Government. Instead, it reduces the specific controls but strengthens strategic influence on outcomes for passengers.

Subsidies

Putting Passengers First suggested that there might be a case for the reform of bus subsidies. Government floated bringing subsidies into line with wider policy objectives so they could contribute to economic, social and environmental policy goals.

Government wants further consultation through the Bus Partnership Forum before proposing specific subsidy reforms. However,

To do this, Government should introduce a set of criteria for devolution that would incentivise local government to specifically address certain areas of national importance. As one of the criteria for satisfying the terms of the consultation process is demonstrating adequate funding, plans that required subsidy would have to fit with central government's criteria.

The criteria should be as follows:

- Must contribute to centrally-defined economic, social and environmental outcome indicators. They would include the following:
 - Increase economic competitiveness
 - Tackle social exclusion
 - Reduce local environmental damage
- Must include formalised cross-boundary co-operation in Multi-Area Agreements (MAAs) spanning Travel to Work Areas, within which powers and responsibilities must be formally delegated between tiers and between authorities. Powers and responsibilities to be delegated would be defined within each plan rather than being prescribed centrally. This would be in line with Government's desire for local areas to carry out reviews of transport governance as contained in the draft bill.¹³
- Must include plans to introduce integrated ticketing both across the TTWA and among bus operators across the TTWA
- Must include a commitment to make funding allocations according to strategic priorities.

Conclusion

The recommendations in the paper are designed to empower local authorities to provide better bus services. They contribute to national political priorities by granting greater local discretion alongside a new method of influence for Government.

The package relies on two sets of reforms. The first is a process for approval of local bus plans. All bus plans would be exposed to public consultation through the Local Strategic Partnership. Quality Contracts and partnership arrangements would all be tested against the local public interest. Government would set-out criteria governing the consultation process similar to the consultation process described in the recent Local Government White Paper. The process would require a demonstration of full funding.

This approach would remove the need for the independent approval of Quality Contracts by an Approvals Board and give greater assurance to operators. Greater local discretion would encourage local authorities to look outwards to local people rather than upwards to central government. It would also allow local authorities to react rapidly to changing local circumstances. An annual, public review of bus plans would play a similar role to the national appeals process it would replace.

The second set of reforms is to subsidies. Subsidies should be devolved in such a way as to reinforce the importance of national political priorities at the local level.

Government should require that local authorities implement locally tailored policies that contribute to environmental sustainability, economic competitiveness and social cohesion before receiving funding.

Subsidies reformed in this way should also be used to encourage other policies to improve bus transport in England. Commitments to integrate ticketing between operators and across boundaries could be included, as well as a requirement to invest in strategic priorities. Adopting Multi-Area Agreements across Travel to Work Areas would be a step towards better transport governance. They would also bring coherence to bus services across local authority boundaries.

This package of reforms aims to empower both national government and local authorities. National government can construct a framework that places national political priorities at the heart of local plans. In this system, local authorities would be rewarded for building their own plans for improving local bus services and contributing to national priorities. In this way, the whole of the state can work together to create bus services that will promote environmental sustainability, strengthen the economy and tackle social exclusion.

Useful Links

<http://www.dft.gov.uk/consultations/open/localtransportbill/consultationdocument>

<http://www.dft.gov.uk/pgr/regional/buses/secputtingpassengersfirst/pdfputtingpassfirst>

http://www.hm-treasury.gov.uk/media/39A/41/eddington_execsum11206.pdf

Documents for Review

Department for Transport, *Strengthening local delivery: The draft Local Transport Bill, Volume 1: A consultation* (May 2007)

Department for Transport, *Putting Passengers First: the Government's proposals for a modernised national framework for bus services* (December 2006)

HM Treasury, *The Eddington Transport Study – The case for action: Sir Rod Eddington's advice to Government* (December 2006)