

## The roles of SPTE and the local authorities

### Introduction

1. This appendix summarizes the role of local authorities<sup>1</sup> in relation to bus services in Scotland and their increased powers under the Transport (Scotland) Act 2001 (the 2001 Act).
2. The Transport Act 1985 (1985 Act) obliged local authorities and passenger transport executives (PTEs) to transfer their bus operations into companies operating at arm's length. Although they were not compelled to sell their bus companies, nearly all have been privatized and only a few councils still own bus companies (including City of Edinburgh Council which owns Lothian Buses jointly with its neighbouring authorities). Local authorities, passenger transport authorities and PTEs are still responsible for 'coordinating' the provision of public passenger transport.<sup>2</sup> Under guidance issued by Scottish Ministers, they may prepare and publish a local transport strategy<sup>3</sup> setting out their policies for the promotion of safe, integrated, efficient and economic transport facilities in their areas. They have powers to provide financial support for socially necessary services that are not provided commercially, to provide school bus services and to operate concessionary fare schemes for particular groups, such as the old, the young and the disabled (see paragraph 21).
3. Local authorities also promote voluntary multi-operator and multi-modal ticketing schemes. Two schemes are significant for the present inquiry. SPTE promotes the

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<sup>1</sup>Throughout this appendix references to a local authority include SPTE and two or more local authorities acting jointly.

<sup>2</sup>Under the Transport Act 1985 and the Transport Act 1968 respectively.

<sup>3</sup>In England and Wales the local transport plan is similar although it is a statutory requirement, rather than a document issued under guidance from Ministers.

multi-operator, multi-modal ZoneCard ticketing system. ZoneCard season tickets are available for periods ranging from one week to one year and provide unlimited travel on trains, the Glasgow subway, some ferries and most operators' buses within the specified zones. South-East Scotland Transport Partnership (SESTRAN) is a voluntary partnership of nine local authorities.<sup>4</sup> It supports a similar multi-operator, multi-modal zonal ticketing scheme, known as 'one-ticket' that is administered by the bus operators. All major bus operators are members of the scheme and ScotRail is a member on a pilot basis for one line. The draft franchise agreement would require the new operator of the Scottish rail franchise to participate fully in one ticket.

4. In addition to the general local authority powers, SPTE has further powers under the Transport Act 1968 (see also Appendix C). These include powers to invest in refurbishing and updating such aspects of the local transport infrastructure as bus stations, bus shelters and bus stops.
5. Local authorities, including those in the SPTE area, also have powers, as roads and traffic authorities, to manage traffic. As well as direct measures, such as bus lanes, that give priority to buses, other traffic management policies, including parking policy and congestion control measures, may significantly improve the relative competitiveness of bus services compared with trains and cars.

### **Transport (Scotland) Act 2001**

6. The 2001 Act gave Strathclyde Passenger Transport Authority and local authorities in Scotland<sup>5</sup> outside Strathclyde new powers. In particular, a local authority may:

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<sup>4</sup>Namely the City of Edinburgh, East Lothian, Midlothian, West Lothian, Clackmannanshire, Falkirk, Fife, Scottish Borders, and Stirling.

<sup>5</sup>Similar (but not identical) powers for authorities in England and Wales, outside London, were provided by the Transport Act 2000.

- make quality partnership (QP) schemes;
- (under certain circumstances) make quality contract (QC) schemes with local transport operators; and
- make statutory ticketing schemes.

The 2001 Act does not give local authorities any power to set fares, either for ticketing schemes or for QPs.

7. QP schemes and ticketing schemes made under these powers must satisfy a 'competition test' administered by the OFT. The competition test is discussed in Annex 1.
8. Under the 2001 Act, Scottish Ministers may by order require specified public bodies to prepare joint transport strategies concerning particular transport issues.

### ***Quality partnerships***

9. Non-statutory QPs have existed since the mid-1990s. Under a non-statutory QP scheme a local authority typically provides improved facilities such as bus shelters, bus stations and bus lanes. Operators who wish to use the facilities undertake to provide bus services of a particular standard, for example by introducing modern low-floor buses. There is, however, no recourse if one party fails to deliver its commitments (unlike under a statutory QP). Over 30 QPs are in place throughout Great Britain, including schemes in Glasgow, Edinburgh and Aberdeen. In 1999, the Government estimated that they had typically increased bus patronage by between 10 and 20 per cent and by up to 40 per cent in exceptional cases.<sup>6</sup> Some other

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<sup>6</sup>See *From workhorse to thoroughbred: a better role for bus travel*, Department for the Environment, Transport and the Regions, March 1999.

reviews have, however, estimated lower increases in patronage; it is often difficult to verify these data which operators consider to be commercially sensitive.

10. The 2001 Act provides for local authorities to make statutory QPs that are enforceable by law. No such schemes are yet in place in Scotland. A local authority can make a statutory QP scheme if it is satisfied that it will implement its relevant general policies in the area concerned and either benefit people using the facilities by improving the quality of local services in the area or reduce or limit traffic congestion, noise or air pollution. Statutory QPs require each party to commit itself to delivering specific improvements to the quality of bus services in an area or along a bus corridor. Typically the local authority invests in better infrastructure and bus operators invest in better vehicles or service improvements. In Scotland,<sup>7</sup> operators' services may also be required to satisfy a minimum frequency requirement. A local authority may not, however, specify maximum service frequencies, service timings or fares.
  
11. A statutory QP scheme must be open to all operators that meet the required quality standards. Adherence to these standards becomes a condition of the continued registration of the service.<sup>8</sup> Operators who have not joined the scheme or provided a written undertaking to the Traffic Commissioner that they will provide services to the necessary standard may not use the QP scheme facilities. Statutory QP schemes require formal consultation with operators and interested parties; they must last for between three and seven years.

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<sup>7</sup>Unlike England and Wales.

<sup>8</sup>Unless certain services are specifically excluded, eg a non-commercial community bus service.

### ***Quality contracts***

12. No QCs are currently in place. They differ significantly from QPs. Under the 2001 Act, a local authority may make a QC scheme for an area if it is satisfied that it is necessary to implement its relevant general policies (ie its transport strategy). Prior approval is required from Scottish Ministers. Before they approve a QC scheme, Scottish Ministers must be satisfied that it is in the public interest and needed to implement the local authority's relevant policies economically, efficiently and effectively. The original intention was that QCs should be introduced in the first instance in exceptional circumstances, for example in limited geographical areas where the QP approach had failed.
  
13. The local authority determines what local bus services should be provided in the area concerned, their fares and the standards to which they should be provided, including frequencies and any additional facilities such as bus shelters. A contract is then put out to tender and the bus operator submitting the best-value bid gains exclusive rights to provide services to the local authority's specification. The service does not have to be registered. The contracts must last for between three and seven years. If a QC scheme is implemented, the standard provisions of the 1985 Act relating to registering local services no longer apply. Operators would no longer be able to register any commercial service wholly within the QC area. Full consultation is required and a scheme cannot come into operation earlier than six months after it is made.

### ***Ticketing schemes***

14. The 2001 Act gives local authorities powers to set up statutory bus ticketing schemes. If voluntary arrangements cannot be made (see paragraph 3), these schemes can require all operators of local bus services in the area to provide

integrated ticketing. Although multi-modal ticketing is not covered in the statutory ticketing powers, other modes of transport can be included in voluntary arrangements. In making a statutory scheme, the local authority must be satisfied that it is in the public interest and helps to implement its relevant general policies.

The types of tickets that may be covered by a ticketing scheme are:

- tickets that entitle the holder to make more than one journey, or cover more than one service, including multi-operator travel cards covered by the block exemption (see Appendix L);
- through tickets entitling the holder to make a particular journey using two or more local services (whether or not they are run by the same operator); and
- (where a particular journey could be made on several services provided by a number of operators) ‘multi-operator individual tickets’ that entitle the holder to make a journey on any service.

15. Any agreement on fares included in a ticketing scheme (or QP) has to satisfy the competition test (see Annex 1) if it results from the exercise of local authority powers. Any aspect of the agreement between operators that does not result from the exercise of local authority powers remains subject to the Competition Act.

### ***Public information about bus services***

16. The 2001 Act enables local authorities to determine what public information about the routes, timetables, fares and other features (for example, connections, travel concessions and facilities for the disabled) of local bus services should be provided and how it should be made available.<sup>9</sup> If voluntary arrangements cannot be made, the local authority may require bus operators to provide it with the information it

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<sup>9</sup>In Strathclyde, these powers can be exercised by SPTE and not by the individual unitary authorities.

specifies, make the information available to the public and recover reasonable costs from the bus operators. Any arrangements for publicizing the information must not discriminate between bus operators. The provision does not entitle local authorities to compel train operators to display information at stations about local bus services.

### ***Bus user complaints tribunal***

17. Regulations made under the 2001 Act established a bus user complaints tribunal to consider written complaints by bus users that had not been satisfactorily dealt with by bus operators. The powers of the tribunal are set out in the Bus User Complaints Tribunal Regulations 2002.<sup>10</sup> These enable the tribunal to 'determine complaints' and, on making a determination, require the bus operator to pay reasonable compensation to the complainant for the actual loss incurred.

### **Subsidized bus services**

18. Local authorities are no longer able to provide general financial support for bus services in their areas. Under the 1985 Act, however, they had a duty to secure the provision of public transport services that are required to meet social needs and would not otherwise be available.<sup>11</sup> The Local Government in Scotland Act 2003 repealed the relevant sections of the 1985 Act in Scotland. Provisions in the Local Government in Scotland Act 2003 let local authorities and PTEs decide whether and when to put supported services out to tender. Local authorities that wish to subsidize local bus services must adhere to the principles of best value. Tenders in excess of EC financial limits must be subject to open competitive tendering and in practice many local authorities use competitive tendering for smaller contracts. Payments can be made to provide additional frequency on a commercially registered service or

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<sup>10</sup>SSI 2002 No. 199.

<sup>11</sup>In England and Wales, unlike Scotland, tenders for such services are subject to a competition test (see Annex 1).

to change its route. The limited availability of funds is likely to prevent an authority from subsidizing all the services that might appear desirable and to encourage it to seek the lowest cost options.

19. There are two main types of contract for tendered services:

- *minimum cost*: the local authority receives the revenue and the contractor tenders for the whole cost of operating the contract (ie revenue risk is taken by the authority); and
- *minimum subsidy*: the operator retains the revenue and tenders for the cost of operating the service less the estimated revenue (ie revenue risk is taken by the operator).

SPTTE told us that the vast majority of its tendered services have minimum subsidy contracts.

20. The contract usually specifies the details of the service, including the type of buses, route, and timetable, and may specify the fares (or a range of fares). Most contracts include clauses allowing them to be suspended if another operator decides to register the service commercially. SPTTE told us that this happened quite frequently in its area.

### **Concessionary fares**

21. For many years local authorities have provided concessionary fares for elderly and disabled people using discretionary powers. Under the 1985 Act, operators are compensated on the basis of foregone revenue. Concessionary fare schemes must be open to all operators of local bus services and local authorities may compel operators to join a scheme. The 2001 Act gave Scottish Ministers the power to require local authorities to provide a minimum level of travel concessions for eligible

people. All local authorities in Scotland voluntarily provide the Scottish Executive's national minimum standard of free local off-peak bus travel for people aged 60 and over and for the disabled.

22. Certain local authority schemes also include subsidized rail travel. The Strathclyde scheme includes subsidized rail travel at a fare of 40p for journeys up to ten miles and half the standard fare for longer journeys. Edinburgh, East Lothian and Midlothian operate a joint concessionary fares scheme that offers a reduced fare of 50p on train services within their areas.

## The competition test under the Transport (Scotland) Act 2001

1. Under the competition test, a QP or ticketing scheme has to be 'justified' if it has a significantly adverse effect on competition. A bus scheme is 'justified' if it:
  - (a) improves the quality of buses or facilities by, for example:
    - (i) requiring the use of newer buses with better access for disabled passengers and passengers with children; or
    - (ii) providing bus stops that give electronic real-time information about waiting times; or
  - (b) has other substantial benefits to users by providing, for example:
    - (iii) more reliable and possibly more frequent services; or
    - (iv) greater inter-modal integration of services; or
    - (v) journey time savings; or
  - (c) reduces traffic congestion, noise or air pollution by, for example:
    - (vi) requiring the introduction of buses with better emissions standards; or
    - (vii) increasing the use of public transport.
2. Where a scheme has a significantly adverse effect on competition, but can be justified, the adverse effect on competition must be 'proportionate' to the justification.
3. The competition test is applied by the OFT, which has issued detailed guidance. Where a scheme meets the first or second justification in paragraph 1, the OFT has said that it will adopt a two-stage approach. It will consider a significant adverse effect on competition proportionate when passengers are better off overall because the benefits to them outweigh the detriments to competition. Second, it will consider whether the parts of the scheme that adversely effect competition are necessary to

achieve the justification. The OFT has said that it is unlikely to consider that the elimination of all competition would be proportionate.

4. Where a scheme is justified on environmental grounds, the OFT has said that it will assume that the benefits of the scheme to passengers and the public outweigh the detriment to competition, unless there is evidence to the contrary. However, the local authority must still demonstrate that the restriction is needed to achieve the environmental gain.
5. If the OFT decides that the competition test is not met, it may give the local authority appropriate directions. These may include:
  - varying or revoking a scheme;
  - varying or withdrawing an invitation to tender for subsidized services;
  - varying or terminating an agreement resulting from such a tender; and
  - prohibiting the exercise of the function in question.
6. Where the OFT decides that the competition test is satisfied, it may subsequently take action if it considers that it has:
  - reasonable grounds to believe that there has been a material change of circumstances since it made its decision; or
  - a reasonable suspicion that the information upon which it based its decision was incomplete, false or misleading in a material way.
7. Where a local authority has no power to impose obligations on bus operators, any agreement between them is assumed to be voluntary, and therefore subject to the Competition Act. For example, a QP scheme may contain some terms that a local authority can compel operators to comply with and others which it cannot. In such a case, those parts of the scheme that the local authority can impose on the operators

are considered under the competition test and those terms which it cannot compel them to comply with are considered under the Competition Act.