

Regulation of local bus services

Introduction

1. This appendix outlines the normal system of regulating local bus services in Scotland outside areas with quality partnerships or quality contracts. Appendix M discusses the role of local transport authorities in relation to bus services and their increased powers under the Transport (Scotland) Act 2001 (the 2001 Act).

Bus deregulation

2. The 1985 Transport Act (the 1985 Act) deregulated the bus industry and substantially reduced bus operator licensing requirements. Over 80 per cent of local bus services in Great Britain are provided on a commercial basis. Outside London and areas with quality partnerships and quality contracts, operators are free to start new services or change existing services provided that they satisfy a number of basic legal requirements that are set out below.

Traffic Commissioners

3. A Traffic Commissioner is appointed by the Secretary of State for Transport for each of eight traffic areas, including Scotland. Legislation governing local bus services is devolved to the Scottish Parliament. Bus services in Scotland are registered by the Traffic Commissioner for Scotland (the Traffic Commissioner), who is also the licensing authority for operators of large goods vehicles (LGVs) and public service vehicles (PSVs), ie buses carrying nine or more passengers for hire or reward.¹ The Traffic Commissioner is also responsible for handling disciplinary cases involving the conduct of LGV and PSV drivers, and for ensuring that any operator holding a licence has sufficient financial and other resources to operate and maintain a fleet of its size. The Traffic Commissioner has no other economic regulatory role and cannot control fares.

Public service vehicle operator's licences

4. Each bus operator needs to obtain a PSV operator's licence (operator's licence) from the Traffic Commissioner. Operators must meet a number of criteria for eligibility and must give several undertakings. A bus operator must:
 - satisfy a good repute requirement;
 - demonstrate appropriate financial standing;
 - employ at least one professionally competent transport manager;²
 - have adequate arrangements to maintain its number of buses in a fit and serviceable condition and have proper operating centre(s);
 - meet service quality standards for registered local services;

¹Or eight or fewer passengers when small vehicles are used to carry passengers at separate fares in the course of the business of carrying passengers.

²Other than in the case of a restricted licence.

- comply with the laws relating to driving and operating the vehicles used under the licence (including speed limits and insurance);
 - ensure that the rules on drivers' hours and tachographs are observed; and
 - ensure that vehicles do not carry more than the permitted number of passengers.
5. An operator's licence authorizes the number of buses that it may use for all types of operation, including registered local bus services, and is open-ended subject to the payment of annual or five-yearly fees. A variation application must be made if the operator wants to operate more buses. The Traffic Commissioner can attach conditions to the operator's licence if, for example, it fails to run its services as registered, interferes with another operator's services, or operates dangerously. The conditions may ban the operator from operating on certain routes, or even from providing local bus services at all. The Traffic Commissioner may also limit the length of the licence period.
 6. If an operator is alleged to have failed to run a local registered service or to have breached its licence conditions, the Traffic Commissioner can consider taking action. Where the failure or breach is not serious, this may be dealt with by correspondence and the issuing of a warning letter. In more serious cases the Traffic Commissioner calls the operator to a public inquiry. If she finds that the operator is at fault, action can be taken. This can consist of a formal warning; suspending or curtailing the licence; adding conditions to it; restricting its validity; and in serious cases, revoking the licence. If the operator fails to run a local registered service, the Traffic Commissioner can impose a financial penalty under section 39 of the 2001 Act and may also place conditions on the licence preventing the operator from operating registered services.
 7. Each bus operator must display a licence disc on every vehicle in use.

Registration of local bus services

8. Under the 1985 Act, an operator can provide a new local bus service after giving 56 days' notice to the Traffic Commissioner. (In special circumstances the Traffic Commissioner can use her discretion to accept a shorter period of notice.) There is no need for any 'approval'. Under the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001,³ an operator must inform the relevant local authorities⁴ of the start of a service 14 days before making its application to the Traffic Commissioner. If a service is cancelled or altered, the operator must give 21 days' public notice of the change by displaying a notice in each bus concerned. Any subsequent variation or withdrawal of the service also requires these periods of notice. A total of 70 days' notice is thus needed to start or change a bus service. Other than in extraordinary circumstances, new bus routes must be run for at least 90 days before they can be cancelled or changed. The Traffic Commissioner publishes details of bus service registrations fortnightly.⁵
9. Operators have to provide the Traffic Commissioner and the relevant local authorities⁶ with information about each proposed route, including its starting and finishing points, a map, the timetable (or a statement that the service interval is 10 minutes or less) and stopping arrangements. The timetable has to show timing

³SSI 2001/219. See sections 4 and 6.

⁴Throughout this appendix references to a local authority include SPTE and two or more local authorities acting jointly.

⁵In *Notices and Proceedings* (available at www.vosa.gov.uk, see paragraph 14).

⁶If there are potential road safety or congestion problems, the local authorities may put restrictions on the roads being used.

points not more than 15 minutes apart.⁷ The operator is free to vary the service in two ways without further reference to the Traffic Commissioner:

- if demand is unusually high, additional 'duplicate' buses may be run as closely as possible to the registered times; and
 - as the registration of a 'frequent service' (one with a frequency of at least one bus every 10 minutes) does not oblige the operator to specify a timetable, it can alter timings on these services provided that it operates within the frequency requirement.
10. Apart from any restriction in its operator's licence conditions (see paragraph 5), there is only one circumstance⁸ where an operator which meets the normal minimum standards may be prevented from providing a service. That is where the Traffic Commissioner has determined 'traffic regulation conditions' at the request of a local authority. Such conditions may be used to prevent dangerous traffic conditions or reduce severe traffic congestion. The few traffic regulation conditions that have been made normally regulate the amount of time that buses can wait at designated bus stops in areas where local authorities are concerned about road safety or congestion and there is substantial competition between operators. Under the 2001 Act, noise and air pollution were added to the reasons for which a traffic regulation condition may be made.
 11. If asked to do so by the relevant local traffic authority and she is satisfied that it is necessary, the Traffic Commissioner may regulate the number of buses operating on a particular route. She has no other powers to control or veto properly completed applications for registration.

Monitoring performance

12. Operators are required to comply with the timetables they have submitted. They are expected to work to a target of 95 per cent of their timetabled services leaving the timing points for the route within the accepted tolerance of 'up to 1 minute early and up to 5 minutes late'.
13. For frequent services, the Traffic Commissioner requires that (on 95 per cent of the occasions that the service is sampled) six or more buses will depart within any period of 60 minutes and that the interval between buses will not exceed 15 minutes.
14. Although the Traffic Commissioner does not have a statutory duty to check whether operators run services in line with the registered details, her office may request that the bus compliance officers of the Vehicle Inspectorate Division in the Vehicle and Operator Services Agency (VOSA) monitor a service. Such a request may follow complaints to the Traffic Commissioner. She can take action against an operator if one of its local services has not been operated according to the registered particulars and within the margin of tolerance. In coming to a decision, the Traffic Commissioner has regard to any explanations given by the operator. The Traffic Commissioner told us that, although resources for monitoring in Scotland are very limited, they are under review and may soon be increased significantly.

⁷Except where the next stop is more than 15 minutes running time away and is then taken to be the next timing point.

⁸Other than in London and areas with quality partnerships or quality contracts.

Bus service operators' grant

15. Immediately after deregulation, the only form of subsidy available to commercially-operated local bus services was fuel duty rebate. Operators of registered local bus services received a grant which offset a substantial part of the duty paid on the fuel used in running local bus services. The 2001 Act replaced this grant with the 'bus service operators' grant' (BSOG). BSOG is paid under section 38 of the 2001 Act, which enables Scottish Ministers to make grants to operators of eligible bus services towards the costs of such services.

Competition law

16. Except where the transport legislation makes specific provision, bus operators are subject to general UK competition law. Since deregulation the OFT has received frequent complaints concerning alleged anticompetitive practices (particularly predatory action) by bus operators and this has led to numerous investigations. The Competition Act would normally prevent operators from agreeing joint ticketing arrangements, including multi-operator, multi-modal tickets. The Secretary of State has by order created a block exemption from the provisions of Chapter 1 of the Competition Act for multi-operator ticketing schemes.⁹ To qualify for exemption a scheme has to satisfy certain criteria. In particular a scheme must:
 - be open to all operators, unless there is an objective, transparent and non-discriminatory reason why it should not be;
 - allow revenue to 'lie where it falls' in the case of multi-operator individual tickets;
 - remunerate operators on the basis of passenger miles in the case of travel cards;¹⁰
 - allow operators to make independent commercial decisions about their numbers of vehicles, service frequencies and timetables, except where necessary for connections; and
 - be accompanied by 'own-brand' singles and/or returns in the case of multi-operator individual tickets.
17. To qualify for exemption, a scheme must not:
 - limit the variety or number of routes offered by individual operators;
 - limit the price or availability of any single-operator ticket;
 - limit the frequency or timing of any service, except where necessary for connections;
 - facilitate the exchange of information between parties, except where this is necessary to the scheme and conducted openly and transparently; and
 - allow price fixing for tickets, except travel cards (although posted prices are allowed for through tickets and 'add-ons').

⁹*The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001/319).*

¹⁰Unless this is not 'reasonably practicable'.

Effect of regulation on operators' commercial freedom of action

18. Outside London and areas with quality partnerships or quality contracts, bus operators operating safely and achieving normal standards of service should have little difficulty registering whatever bus services they wish to operate. They are generally free to decide what frequency of service to offer. Operators are also completely free to determine their fares. They are, however, expected to operate services broadly as registered but may vary the registration freely after giving notice.

Behavioural undertakings given by FirstGroup

19. FirstGroup's bus operations in Strathclyde and south-east Scotland outside Edinburgh face stronger regulation through the undertakings given following their merger with SB Holdings Ltd (see Appendix J). These limit fare increases in both areas and place restrictions on certain types of predatory action in south-east Scotland outside Edinburgh.