

## The regulation of local buses

### Introduction

1. This appendix summarizes the role of local authorities and Traffic Commissioners in relation to bus services, and outlines the normal system of regulating local bus services outside areas with quality partnerships or quality contracts. In addition, Annex 1 summarizes the key participants and their roles.
2. The Transport Act 1985 (1985 Act) obliged local authorities 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.
3. Under the Transport Act 2000 (2000 Act), local authorities have a statutory duty to produce a bus strategy document setting out their policies for the promotion of safe, integrated, efficient and economic transport facilities in their areas. This strategy document provides a policy template for making the best use of an authority's powers and duties. There is a requirement on authorities to consult bus operators or their representatives with regard to the bus strategy. Local authorities have powers under other legislation to secure provision of socially necessary services that are not provided commercially and school bus services. District councils are statutorily required to provide concessionary fare permits for the old and the disabled.<sup>1</sup> Local authorities have powers under the 1985 Act to make travel concessions schemes for children as well as the old and the disabled.<sup>2</sup>
4. Local authorities promote voluntary multi-operator and multi-modal ticketing schemes. Hertfordshire has a number of these schemes which are outlined in the memo on ticketing and concessions.
5. Local authorities 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.

### Bus deregulation

6. Over 80 per cent of local bus services in Great Britain are provided on a commercial basis (61 per cent in Hertfordshire). Outside London and areas with quality partnerships or quality contracts, bus operators should have little difficulty operating whatever bus services they wish to operate, provided that they satisfy a number of basic legal requirements that are set out below. Operators are generally free to decide what frequency of service to offer and are also completely free to determine their fares. They do, however, have to register local services<sup>3</sup> and are expected to

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<sup>1</sup>Section 145 of the Transport Act 2000.

<sup>2</sup>Section 93 of the 1985 Act.

<sup>3</sup>'Local service' is defined in the 1985 Act. Broadly, it is a bus service operated at separate fares where the distance between stopping places or overall journey length is less than 15 miles (as the crow flies).

operate services broadly as registered but may vary the registration freely after giving sufficient notice.

### **Traffic Commissioners**

7. A Traffic Commissioner is appointed by the Secretary of State for Transport for each of eight traffic areas. Hertfordshire is in the Eastern Traffic Area. Local bus services have to be registered with the Traffic Commissioner for the area in which they are provided. Traffic Commissioners are also the licensing authorities for operators of large goods vehicles (LGVs) and public service vehicles (PSVs), ie buses carrying nine or more passengers for hire or reward.<sup>4</sup> The Traffic Commissioner cannot control fares.

### **Public service vehicle operator's licences**

8. Each bus operator needs to obtain a PSV operator's licence (operator's licence) from the Traffic Commissioner for each area in which it has an operating centre. Operators must meet a number of criteria for eligibility. To be eligible, a bus operator must:
  - satisfy a good repute requirement;
  - satisfy the appropriate financial standing requirement;
  - employ at least one professionally competent transport manager;<sup>5</sup>
  - have adequate arrangements to maintain its number of buses in a fit and serviceable condition and have proper operating centre(s); and
  - have adequate arrangements for securing compliance with the law relating to the driving and operation of those vehicles.

As regards the appropriate financial standing requirement, the applicant must have available sufficient financial resources to ensure the establishment and proper administration of the businesses carried on, or proposed to be carried on, under the licence. Council Directive 96/26/EC as amended imposes a requirement regarding appropriate financial standing in similar terms and also requires an undertaking to have available capital and reserves of at least EUR 9,000 when only one vehicle is used and at least EUR 5,000 for each additional vehicle. For these purposes the value of the euro in non-euro states is to be fixed every five years. The rates to be applied are those obtained on the first working day of October and published in the *Official Journal of the European Communities*. They have effect from 1 January of the following calendar year. On 18 October 2004, the Department for Transport published the following figures with effect from 1 January 2005.<sup>6</sup>

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<sup>4</sup>Or eight or fewer passengers when small vehicles are used to carry passengers at separate fares in the course of the business of carrying passengers.

<sup>5</sup>Other than in the case of a restricted licence. Where the operator is an individual, this requirement is met if he is professionally competent.

<sup>6</sup>The announcement stated that the Traffic Commissioners retain their discretion to set financial standing levels for restricted licence holders and that they were proposing to increase these in line with the increases for standard international licence holders. The increased amounts for restricted licences are the amounts shown in the table.

TABLE 1 **Appropriate financial standing—minimum requirements**

	£
<i>Standard International Licences and Standard National Licences</i>	
First vehicle	6,200
Each additional vehicle	3,400
<i>Restricted licence</i>	
First vehicle	3,100
Each additional vehicle	1,700

Source: Department for Transport.

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9. Operator's licences do not have an expiry date but are subject to the payment of annual or five-yearly fees and a five-year licence review. The Traffic Commissioner is required to impose a condition limiting the number of vehicles that can be operated simultaneously under the licence. The operator is then issued with the number of operator's discs it requires (up to the maximum number allowed in the licence) and one of these has to be displayed beside the tax disc on each vehicle when a bus is being used under the licence. A variation application must be made if the operator wants to increase the maximum number of buses it may operate at the same time. On the grant of a licence, the Traffic Commissioner is required to attach certain conditions and (to a limited extent) can attach others under sections 16 and 16A of the Public Passenger Vehicles Act 1981.
  10. A Traffic Commissioner has a disciplinary role and can revoke licences as well as impose a penalty on operators. Where the failure or breach (see paragraphs 11, 12, 17, 18 and 19) is not serious, this may be dealt with by correspondence, the issuing of a warning letter, or an interview 'in chambers'. In more serious cases, the Traffic Commissioner calls the operator to a public inquiry. If the Traffic Commissioner finds that the operator is at fault, action can be taken. In some circumstances, following disciplinary proceedings, a Traffic Commissioner can revoke or suspend a licence, vary existing conditions attached under section 16 of the Public Passenger Vehicles Act 1981 or attach new ones.<sup>7</sup> These include cases where the operator has failed to comply with a condition or an undertaking given to him or there has been a material change of circumstances since the licence was granted.
  11. In some cases, the Traffic Commissioner can attach a condition banning the operator from operating local services on certain routes, or from providing local bus services at all.<sup>8</sup> These include cases where the operator has failed to run its services as registered, failed to comply with the requirements of a quality partnership scheme, interfered with another operator's services, or operated dangerously.
  12. If the operator fails to run a local registered service, or fails to comply with the requirements of a statutory quality partnership scheme or ticketing scheme, the Traffic Commissioner can impose a financial penalty.<sup>9</sup>

### **Registration of local bus services**

13. 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

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<sup>7</sup>Section 17 of the Public Passenger Vehicles Act 1981.

<sup>8</sup>Section 26 of the 1985 Act.

<sup>9</sup>Of up to £550 multiplied by the total number of vehicles which the operator is licensed to use under all PSV operator's licences held by the operator.

Commissioner can use discretion to accept a shorter period of notice.) There is no need for any 'approval', but the operator has to provide the statutory particulars and other information that the Traffic Commissioner reasonably requires. If an operator wishes to vary or cancel a service, the operator must again give 56 days' notice. The Traffic Commissioners publish details of bus service registrations fortnightly.<sup>10</sup>

14. Operators have to provide the Traffic Commissioner and the relevant local authorities<sup>11</sup> with information about each proposed route, including its starting and finishing points, a map, the timetable (or a statement that the service interval will be 10 minutes or less) and stopping arrangements. The timetable has to show timing points at principal points on the route. 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.
15. Apart from any restriction in its operator's licence conditions, there is only one circumstance<sup>12</sup> 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. The conditions have to apply to all local services in the area specified in the conditions (or all those of a specified class). They have to be attached to the licence of every operator with a registered service affected by the conditions. Such conditions may be used only when required to prevent dangerous traffic conditions, reduce severe traffic congestion or reduce noise and air pollution. 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.
16. A traffic regulation condition can be made only for the purpose specified in the legislation. This includes limiting the number of vehicles which may be used, or the frequency at which vehicles may be operated, in the provision of a service along all or part of its route whether generally or during particular periods or at particular times.<sup>13</sup>

### **Monitoring performance**

17. Operators are required to comply with the timetables they have submitted. The Traffic Commissioners have published a direction on bus standards. It states that they expect bus operators 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'. These targets apply everywhere outside London.

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<sup>10</sup>In *Notices and Proceedings* available from the Vehicle and Operator Services Agency at [www.vosa.gov.uk](http://www.vosa.gov.uk).

<sup>11</sup>If there are potential road safety or congestion problems, the local authorities may put restrictions on the roads being used.

<sup>12</sup>Other than in London and areas with quality partnerships or quality contracts.

<sup>13</sup>Public Service Vehicles (Traffic Regulation Conditions) Regulations 1986 (SI 1986/1030).

18. For frequent services, the Traffic Commissioners expect 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.
19. The Vehicle Inspectorate Division in the Vehicle and Operator Services Agency (VOSA) monitors services on behalf of the Traffic Commissioners. Such a request may follow complaints to a Traffic Commissioner. The Traffic Commissioner can take action against an operator if one of its local services has not been operated according to the registered particulars. In coming to a decision, Traffic Commissioners have regard to any explanations given by the operator.

### ***Bus service operators' grant***

20. 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 2000 Act replaced this grant with the 'bus service operators' grant' (BSOG),<sup>14</sup> which again reimburses most of the fuel duty (all for new cleaner fuels) paid by the operators.

### **Local authority powers**

21. The 2000 Act gave local authorities new powers. In particular, a local authority may now:
  - make quality partnership (QP) schemes;
  - (under certain circumstances) make quality contract (QC) schemes with local transport operators; and
  - make statutory ticketing schemes.

The 2000 Act does not give local authorities any power to set fares, either for ticketing schemes or for QPs.

22. 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 2.

### ***Quality partnerships***<sup>15</sup>

23. 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. Over 30 QPs are in place throughout Great Britain. In the past Hertfordshire had at least two such schemes: one in Elstree and Borehamwood and one in the Lea Valley. TAS indicated that these QPs in Hertfordshire had increased patronage by 20 per cent.<sup>16</sup> HCC has indicated that though it would have regarded its

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<sup>14</sup>Areas with a QC will not have a BSOG, as the parallel sum will be transferred to the local authority.

<sup>15</sup>TAS, in its publication *Quality Bus Partnerships Good Practice Guide*, defines QPs as 'agreements (either formal or informal) between one or more local authorities and one or more bus operators, for measures to be taken up by more than one party to enhance (mainly commercial) bus services, in a defined area, to meet the strategic objectives of the partners'. [www.tas-passtrans.co.uk/qbp-gpg/chapter2.htm](http://www.tas-passtrans.co.uk/qbp-gpg/chapter2.htm).

<sup>16</sup>[www.tas-passtrans.co.uk/qbp-gpg/appendixB.htm](http://www.tas-passtrans.co.uk/qbp-gpg/appendixB.htm).

arrangements in Elstree and Borehamwood and in the Lea Valley as attempts at QPs, it now only has the Stevenage SB1 as an example of a non-statutory QP on bus services.

24. The 2000 Act provides for local authorities to make statutory QP schemes. A local authority can make a 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 QP schemes require the authority and the operators to commit themselves 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. A local authority may not, however, specify maximum service frequencies, service timings.
25. A statutory QP scheme must be open to all operators who meet the required quality standards. Operators who have not 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 at least five years. As stated above, disciplinary proceedings can be taken against an operator who fails to comply with the requirements of a statutory QP scheme.

### ***Quality contracts***

26. No QCs are currently in place in Great Britain. They differ significantly from QPs. Under the 2000 Act, a local authority may make a QC scheme, with the approval of the Secretary of State, for an area if it is satisfied that it is necessary or the only practicable way for it to implement its transport strategy. The original intention was that QCs should only be introduced in exceptional circumstances, for example in limited geographical areas where the QP approach had failed.
27. QCs, introduced in the Transport Act 2000, allow local transport authorities to determine the routes, fares, quality standards and frequency of bus services in specified areas by making a scheme. In England, a scheme requires the approval of the Secretary of State and must not be for more than ten years. After the scheme has been made, a contract is put out to tender and the successful bus operator gains exclusive rights to provide services to the local authority's specification. Currently there is a minimum implementation period of 21 months; however, this may be reduced to six months in the future.<sup>17</sup> The contracts must not last for more than five years. If a QC scheme is implemented, the standard provisions of the 1985 Act relating to registering local services no longer apply. The services would not have to be registered and other operators would no longer be able to register any commercial service within the QC area.

### ***Ticketing schemes***

28. The 2000 Act gives local authorities powers to set up statutory bus ticketing schemes. If voluntary arrangements (such as the Intalink Partnership schemes in Hertfordshire) cannot be made, these schemes can require all operators of local bus services in the area to provide integrated ticketing. In making a statutory scheme, the local authority must be satisfied that it is in the public interest and helps to implement

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<sup>17</sup>The Department of Transport [www.dft.gov.uk/strategy/futureoftransport/chapter5/next.htm](http://www.dft.gov.uk/strategy/futureoftransport/chapter5/next.htm).

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;
  - 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);
  - (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; and
  - tickets entitling the holder to make a journey, or more than one journey, involving both travel on one or more local services and travel by one or more connecting rail or tram services.
29. A ticketing scheme (or QP) has to satisfy the 'competition test' if it results from the exercise of local authority powers. Any aspect of an agreement between operators that does not result from the exercise of local authority powers remains subject to the Competition Act.

### ***Subsidized bus services***

30. Local authorities are no longer able to provide general financial support for bus services in their areas. Under the 1985 Act, however, county councils have a duty, and district councils have power, to secure the provision of public transport services that they consider appropriate to meet social needs and would not otherwise be available, for example in rural areas. Under the 1996 Education Act, local authorities can secure the provision of school buses. HCC estimated that 39 per cent of the buses in the county were run on a subsidized basis. Local authorities that wish to subsidize local bus services must generally<sup>18</sup> invite tenders, and when deciding which (if any) tender to accept, must have regard to a combination of economy, efficiency and effectiveness; the implementation of the policies set out in the bus strategy; and the reduction or limitation of traffic congestion, noise or air pollution. Furthermore, where tenders are in excess of EC financial limits, the local authority must comply with the EC procurement rules. In 2002/03, HCC spent £9.4 million gross (£5.2 million net) on subsidized (tendered) services, accounting for approximately one-third of the operator's revenue in the county.<sup>19</sup>
31. There are two main types of contract for tendered services:
- 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

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<sup>18</sup>Tenders are not required under the 1985 Act where action is urgently required for the purpose of: maintaining an existing service; securing a service which has ceased to exist; or securing a service to meet a public transport requirement which has arisen unexpectedly and ought to be met without delay. The agreement must not remain in force for more than three months and the local authority must invite tenders as soon as possible. There is also an exemption based on the authority's forecast expenditure on service subsidies. An agreement is exempt from the tender requirements if the subsidies under the agreement and the amount payable under other non-tendered service subsidy agreements for the financial year in which the agreement is made do not exceed one-quarter of the authority's forecast for that year. If the agreement remains in force after the end of the year, subsidies payable under it in any subsequent year must not exceed one-quarter of the forecast expenditure on service subsidies for that year. Furthermore, the exemption does not apply to an agreement for more than five years.

<sup>19</sup>Hertfordshire's Bus Strategy 2002/03.

- 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).

The vast majority of HCC's tendered services are on a cost basis.

32. The contract usually specifies the details of the service, including the type of buses (including age), 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.

### **Concessionary fares**

33. For many years, local authorities have provided concessionary fares for elderly and disabled people. The 1985 Act gave local authorities power to make concessionary schemes and when making schemes requires them to have as an objective the provision of compensation to operators such that they are no worse off as a result of the scheme. In Hertfordshire, the compensation is related to the scheduled bus route mileage. Concessionary fare schemes must be open to all operators of local bus services and local authorities may compel operators to join a scheme.
34. The 2000 Act imposed a duty on district councils to issue, on application and free of charge, travel concession permits to people residing in their area who are aged 60<sup>20</sup> and over or disabled. Such a permit entitles the holder to travel on a bus at half fare between places in the authority's area at the times stated in that Act. The arrangements for reimbursement are such as the operators in the area may agree or, in the absence of agreement, such as may be determined by the authority.
35. In Hertfordshire, the funding for concessionary schemes for people aged 60 and over and for the disabled comes from the district level but is administered by the county under the 1985 Act. The districts can have schemes that are more generous than the minimum, and Stevenage, for example, has a scheme where people aged 60 and over and the disabled go free. In 2002/03, approximately £5.4 million was spent on such schemes in Hertfordshire.<sup>21</sup> Hertfordshire has made a concessionary fare scheme for children. The district councils in Hertfordshire have not made separate reimbursement arrangements for permits under the 2000 Act and operators are reimbursed in accordance with the Elderly & Disabled Scheme.
36. As the local education authority, HCC also provides home-to-school transport for pupils and students who are eligible under the Education Act 1996.<sup>22</sup> This is carried out either by operation of specific bus, coach or taxi contract or by purchase of bus or train passes used on the passenger transport network as appropriate. For pupils and students who are not entitled, there may be arrangements for assisted travel on one of these specific routes or the ability through the HCC concessions scheme to get a discount on the bus network. In many areas there are additional bus routes or journeys primarily for school or college transport. The income from home-to-school transport is important for commercial operators and a means by which HCC can assist them to deliver the best solution for everyone.

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<sup>20</sup>As a result of the 2000 Act and the Travel Concessions (Eligibility) Act 2002.

<sup>21</sup>Hertfordshire's Bus Strategy 2002/03.

<sup>22</sup>The Education Act 1996 consolidated the Education Act 1944.

## Key participants

1. *The county council:* As the transport authority for Hertfordshire, the county council does the following:
  - (a) produces the statutory bus strategy document (see paragraph 3 in Appendix E);
  - (b) procures contracted local bus services (£5.2–£5.3 million a year net cost) and funds 75 per cent of such schemes (100 per cent of school-only routes);
  - (c) manages bus network infrastructure;
  - (d) manages QPs and QCs if needed;
  - (e) advises on bus priority and passenger transport in new developments;
  - (f) promotes multi-operator and multi-modal ticketing schemes (the Intalink partnership);
  - (g) has powers to manage traffic; and
  - (h) administers reimbursement of the concessionary schemes run by the district councils (£5.4 million a year).
2. *The district councils:* Each district council:
  - (a) provides 25 per cent of the funding for contracted local bus services;
  - (b) manages local quality partnerships and fund concessionary fares schemes for the elderly and disabled;
  - (c) makes a contribution to Dial-a-Ride services and is a member of the Intalink partnership.
3. *The Traffic Commissioner:* Traffic Commissioners are appointed by the Secretary of State for Transport and are responsible for the:
  - (a) registration of local bus services, for operator licensing and for monitoring of industry standards and performance;
  - (b) functions relating to driving licences for LGV and PSV drivers; and
  - (c) PSV and LGV operators' licences.

### The competition test under the Transport Act 2000

1. Under the competition test, a QP, ticketing scheme or tendering exercise for subsidized services 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:
    - (i) more reliable and possibly more frequent services; or
    - (ii) greater inter-modal integration of services; or
    - (iii) journey time savings; or
  - (c) reduces traffic congestion, noise or air pollution by, for example:
    - (i) requiring the introduction of buses with better emissions standards; or
    - (ii) 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 affect 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.