

promoting quality public transport.....

Jimi Adeleye
Buses and Taxi Division
Regional & Local Transport Policy Directorate
Department for Transport
Zone 3/11 Great Minster House
76 Marsham Street
London SW1P 4DR

27th May 2010

Dear Mr Adeleye,

Improving Bus Passenger Services through the Regulatory Framework

1. Introduction

1.1 TravelWatch NorthWest (TWNW) is an independent Community Interest Company representing users of all forms of public transport in North West England. We are grateful for the opportunity to be able to comment on this consultation.

1.2 Whilst we have tried to respond within the framework of the questions posed, we are concerned about a number of overarching issues. We have attempted to address these in our answers to the general Question 19 because we see some of the proposed amendment to the PSV (Registration of Local Services) Regulations having considerable potential to address our concerns.

1.3 We note too the continuing consultation on the PSV (Display of Information) Regulations to which we also make reference in our response to the same general Question.

1.4 Although there is no question on the topic of wheelchairs on buses we have tried to address this proposal at 17B.

2. Advance notice to local authorities

Question1: Do you agree with the proposal for amending the Public Service Vehicles (Registration of Local Services) Regulations 1986 (SI 1986/1671) with an additional provision requiring an operator to inform the relevant authority or authorities 14 days before making an application to the Traffic Commissioner to start a bus service, or vary or cancel an existing service?

2.1 TWNW agrees with this proposal. It would go some way towards creating greater stability in bus networks and be helpful to Local Transport Authorities (LTAs) who have to publicise changes or who might wish to consider consequential changes to affected subsidised services.

2.2 The LTA should guarantee confidentiality and ensure a competitor could not use the 14 days to register an alternative service.

3. Minimum period of operation for newly-registered services

Question 2: Do you agree with the proposal to introduce a 'No variation or cancellation of a registered service for 90 days' provision, and for notice of any proposed variation or cancellation to be placed on vehicles for a minimum period of 21 days?

3.1 TWNW is in general agreement with there being, as already is the case in Scotland, a minimum period of operation for newly registered services. This would also help stabilise bus networks. The argument that it could discourage the registration of new experimental services has some validity but this could be countered by introducing a new protected "experimental service" class of registration under which a deregistration on proven commercial grounds would not incur any penalties. Traffic Commissioners, as this consultation reminds, already have powers which they can use in this way.

3.2 The proposal could also discourage the "predatory registration" by some operators of superfluous "commercial" services with the deliberate aim of destabilising a competitor's existing commercial (or even, in a worse case scenario, subsidised) services.

3.3 There is a converse problem of "tactical deregistrations" where operators withdraw commercial services in anticipation of their winning the anticipated LTA invitation to tender for their replacement. This might also be reduced if the proposed rule could be extended so that any operators would not be allowed to register services tendered for, and which they had previously run commercially, within a period of 90 days unless they could show that they had the support of the LTA.

3.4 Because Traffic Commissioners can unilaterally or at an LTA's request substitute different periods of notice this need not automatically prevent a service being re-instated in the event of the only, or best value, bid to do so being made by the operator who initially deregistered it, but hopefully it might be a disincentive to making tactical deregistrations in the first instance.

4. Notifying passengers of service changes

Question 3: Do you agree that the proposed requirement for operators to place notice of any proposed variation or cancellation on vehicles would ensure that the travelling public are well informed about changes which affect their journeys?

4.1 TOWNW agrees that notifying passengers of service changes by way of a notice on vehicles (as in Scotland) is a sensible measure. Many operators already do so voluntarily.

Question 4: Are there other factors to consider with regard to compliance and enforcement of this proposed requirement?

4.2 Yes. The requirement should not detract in any way from the primary duty of LTAs to publish (alone or in partnership with operators) timetables and other details of Registered Local Services. This is why registrations have to be copied to them in the first instance.

4.3 Also a means should be devised to ensure that where services are either intentionally or consequentially jointly operated over some or all of a route, individual operator's notices are impartial, detailing the entire service and not just those parts and times provided by the operator on whose bus the notices are to be placed.

5. Variation of services around bank holidays

Question 5: Do you agree with suggested changes to Regulation 9(2) of The Public Service Vehicles (Registration of Local Services) Regulations 1986 (SI 1986/1671) to redefine the journeys for which a service may be varied; to substitute 56 days for 21 days as required period of notice, and 28 days for 21 days for community bus services?

5.1 TOWNW agrees with the proposals suggested for reducing the present confusion surrounding the variation of services in a 14 day "window" around bank holidays. Whilst currently registrations of bank holiday variations are not required, prior notification to LTAs and TCs is still needed.

5.2 The proposed tighter definition of bank holidays to apply across the UK is sensible, as is lengthening the period of notice to LTAs and TCs. Although the suggested standard 56 day period of notice (as applies all year excluding bank holidays) is a huge increase on the current 21 days relating to bank holiday weeks, it appears not to be inhibiting the many operators who already voluntarily give such notice. Provision for a shorter period with LTA agreement could be made. Passengers using community bus services should be entitled to the same notice as any other bus passenger.

5.3 Such advance warning would facilitate better forward planning of journeys over bank holidays and be most helpful to Local Transport Authorities, Transport Direct and Traveline.

6. Rail replacement services

Question 6: Do you agree that the Public Service Vehicles (Registration of Local Services) Regulations 1986 should be amended so that no notice period would be required for registration of temporary rail replacement bus services?

6.1 TOWNW agrees with this consultation's conclusion that registering rail substitution/replacement services, even though no period of notice is required, is impractical and hence rarely done. In the vast majority of cases there should be no need to register rail replacement services as they are generally not available to the public at large, their use being restricted to rail passengers with valid rail tickets for the journey covered by the replacement bus. As such they cannot therefore become Registerable Local Services. Nor would they attract Bus Service operator grant (BSOG). Instead they have generally become de facto procured Private Hire Contracts, except in the rare event of the procuring Train Operating Company (TOC) or National Authority asking the provider to register them for use by both bus and rail passengers.

Question 7: On a long term, do you agree that exempting rail temporary replacement bus services from the requirement to register will facilitate greater effectiveness of the service?

6.2 Yes, it is sensible to exempt these services entirely from the requirement to register for the reasons stated above.

7. Publication Regulations

Question 8: Will the proposed changes to the publication regulations remove ambiguity and provide needed clarity with regard to these regulations? If not please state why and provide all the necessary supporting evidence.

7.1 Yes. TOWNW would support the proposed changes.

8(5). Bus contracts 'De minimis' provisions: reducing administrative costs for local authorities and bidders for service contracts

Question 9: What are your views regarding proposal to change the de minimis level provisions in domestic legislation in favour of EU levels?

8.1 TOWNW supports this proposal. It would give LTAs greater flexibility to contract to provide socially desirable services without the need for competitive tendering. The current UK de minimis level (Transport Act 1986) constrains some LTAs and is lower than that in Regulation EU 1379/2007, which raises thresholds and amends how these can be applied. The whole question of compulsory competitive tendering in the Bus Industry is of course currently under consideration by the Competition Commission.

Question 10: Which of the three options proposed are you in favour of, and why?

8.2 TOWNW agrees with DfT that Option B (alignment of the TA 1985 with the EU Regulation 2007) is preferable. It would reduce the cost of LTAs competitive tendering, especially where there patently is little possibility of receiving such tenders (as for example in deep rural areas or where a service is tactically deregistered by the only viable operator).

9(6). ‘General rules’ under EC Regulations (EC) No 1370/2007: increasing the scope for securing a better deal on fares for passengers.

Question 11: Do you have any views on proposal to make secondary legislation (under Section 91(1) of the Transport Act 1985) enabling local authority to make “general rules” to impose maximum fares on bus operators and compensate them accordingly, without going through competitive tendering?

9.1 TOWNW strongly supports this proposal. It could extend the flexibility and choice of LTAs as to how they run their local services, for example, by enhancing the provision and scope of concessionary fares. The consultation states “ this approach could be seen to have the potential to limit competition for the local bus market, but the government’s view is that the situation is similar to Quality Contract Schemes established under Local Transport Act 2008”. TOWNW supports this view.

9.2 Bus fares in many localities are rising even faster than rail fares, and a provision allowing LTAs to set maximum fares would be welcome, even if this were to be constrained by their having to compensate operators accordingly. However, there are other statutory mechanism which could equally deliver a maximum fares, and care would need to be taken that any general rules did not conflict with these mechanisms, which include

- The making of a statutory Quality Contract scheme. (Local Transport Act 2008 Pt 3)
- A statutory Quality Partnership scheme (Local Transport Act 2008 Pt 3) which can now include a requirement as to a maximum fare.
- A Voluntary Partnership scheme which may include a ticketing scheme with a maximum fare and
- The making of a ticketing scheme containing a maximum fare (Transport Act 2000 ss 135-8)

10(7). Driver and passenger conduct: improving bus journey experience for everyone.

Question 12: Do you agree with proposal to impose less than criminal sanctions (such as penalty fines) against operators who repeatedly violate the Conduct Regulations?

10.1 Yes. Breaches of the legislation are rarely prosecuted in the criminal courts – the one exception being fares evasion. The introduction of civil sanctions, such as financial penalties, against passengers and operators who infringe the regulations makes sense.

Question 13: Are there any other considerations that should be taken into account in determining appropriate and effective sanctions against repeated breach of Conduct Regulations?

10.2 The legislation relating to fares evasion on buses and trains is divergent. Whilst there are regulations covering penalty fares on trains, there is no equivalent relating to bus travel. Operators have got around this in the past by describing a high penalty fare as “the standard fare” with all other fares as “concessions”, but this is a legally questionable procedure, and the opportunity to standardise bus and rail fares evasion penalties should be taken.

11. Consumption of alcohol on buses

Question 14: Do you have any general views on the consumption of alcohol on buses?

11.1 The opportunity should be taken to make this illegal

Question 15: Do you agree with proposal to amend The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990; to introduce a ban of the consumption of alcohol and carriage of open container of alcohol on buses, in England and Wales?

11.2 Yes, given that such a ban exists in most operators’ conditions of carriage or Byelaws, the suggestion would codify the situation.

Question 16: Are there any other considerations that should be taken into account in introducing such a ban?

11.3 Drivers are not policemen, nor do they have police powers, although they can request and expect police assistance. They may also refuse to carry an intended passenger or ask a passenger to leave their vehicle for specific reasons (such as drunkenness). Care will however be needed in drafting such a proposed ban that it does not impose unreasonable expectations on operators’ staff who will have to enforce it. There can be a serious risk of injury to drivers and their passengers if drivers seek to enforce an alcohol ban on their vehicles.

12. Changes to the definition of Regulated Public Service Vehicles

Question 17: Do you agree that the proposed changes to the definition of ‘regulated public service vehicle’ in the Conduct Regulations, to include other European approved vehicles is a step in the right direction? If not, please state why and provide all the necessary supporting evidence.

12.1 Yes, the proposal is in line with the trend in EU legislation to define vehicles by their use rather than their construction. An alternative proposal may be to apply the regulations to all Passenger Carrying Vehicles (as happened when the PSV driving licence became a PCV driving entitlement)

13. Designated wheelchair space on the bus.

Q 17B = No question tabled but DfT say they seek views on measures to ensure stricter compliance with the regulations in general, particularly on Whether the introduction of financial sanctions against operators who persistently breach any aspect of the regulations, would be useful.

13.1 Drivers are not policemen (see Q 16) although they can refuse to carry an intended passenger or ask a passenger to leave their vehicle for specific reasons.

13.2 Many wheelchairs today are larger than the ISO standard of 1985 which the new generation of low floor buses are required to meet. These buses are also designed to carry buggies without the need for them to be folded, and there can also be an argument that passengers with buggies, rather than being perceived as taking up wheelchair space, are themselves “disabled” by virtue of their “mobility impairment”. Buggies, or prams, have less priority than wheelchairs – perhaps the opportunity might be taken to seek to give more equal rights of carriage on a bus?

13.3 Mobile scooters are becoming more popular and there is a growing demand for buses, trains and trams to accommodate them. There is also increased pressure by the cycling lobby for the carriage of bikes on buses - externally fitted cycle racks may be appropriate on some services. Perhaps the place to address all these concerns would be a revision of the PSV (Fitness, Equipment and Use etc) Regulations?

14. Smoking on buses.

Question 18: Do you have any comments regarding updating the Conduct Regulations in line with the smoking ban in Part 1 of the Health Act 2006?

14.1 Alignment of the two regulations is sensible and TWNW would support this proposal.

15. General

Question 19: What other amendments to secondary legislation do you think might facilitate improvements to bus services? Please state why and provide all the necessary supporting evidence.

15.1 The obligation in the PSV (Registration of Local Services) Regulations for operators to display or make available faretables and timetables on vehicles used on Registered Local Services is too often ignored¹. TWNW is concerned that this information is often extremely difficult to obtain – operators and their trade association apparently believing that it is sufficient for drivers to supply passengers with details of how and where the information can be

¹ “Information about bus fares” TWNW 2009

obtained. The opportunity should be taken to reinforce this obligation in the amended regulations. LTAs should also have an equal and parallel duty to display at least the current timetable at a high percentage of bus stops, together with contact information showing where current bus fares information can be obtained.

15.2 The opportunity should be taken to add a requirement to the PSV (Registration of Local Services) Regulations requiring there to be a notice prominently displayed in all vehicles used on Registered Local Services explaining how and to whom comments and complaints can be made and giving contact details of the appeals procedure. TOWNW notes however the current consultation on draft PSV (Display of Information) Regulations, which would have the same effect by requiring the same information to be given on buses and coaches used under a PSV Operators' Licence². It should also be remembered that Community Buses can now be operated using large Passenger Carrying Vehicles with 17 or more seats³ driven by paid employees and so their operation could be very similar to that of other registered Local Services

15.3 Traffic Commissioners' newly enhanced powers to investigate performance and hold to account operators and local traffic authorities is predicated on the availability of reliable data, and this will increasingly also be needed by LTAs (who will all in April 2011 become Travel Concession Authorities - TCAs). The opportunity could be taken to amend the PSV (RLS) Regulations to oblige operators to share non commercially confidential data generated⁴ and collected on board PSVs on registered local services. This is already done voluntarily by many operators who have entered into Punctuality Improvement Partnerships (PIPs) with their LTAs⁵. These can often be extended to sharing some additional commercial data for financial⁶, operating and monitoring purposes, with a proviso that this is done on a strictly confidential basis within enforceable data sharing agreements as to its intended visibility and use.

Yours sincerely

John Moorhouse
Company Secretary

(Author of paper Paul Fawcett)

² as drafted this regulation excludes Community Buses used to provide registered local services under a CB Permit.

³ Local transport Act 2008 s59

⁴ e.g. by GPS, RTPI systems and Electronic Ticket Machines

⁵ "Bus Punctuality Partnerships" – Guidance for Operators and Local Authorities. DfT. Mar 2010

⁶ Re-imbursment for concessionary travel, and possibly, as suggested in this consultation, fare capping.