



RESEARCH PAPER 08/18
18 FEBRUARY 2008

Local Transport Bill [HL]

Bill 67 of 2007-08

The Government intends that this Bill, if enacted, would enable local transport authorities to:

- improve the quality of local bus services, building on the measures set out in December 2006's *Putting Passengers First*;
- reform the arrangements for local transport governance in the major conurbations; encourage strong local leadership and a coherent approach to transport across local authority boundaries and across different transport modes; and
- facilitate local road charging schemes in a way that best meets local needs - while ensuring that any schemes are consistent and interoperable.

It would also make changes to the role of traffic commissioners and establish a bus passenger champion.

This Bill was published in draft for public consultation and Parliamentary pre-legislative scrutiny on 22 May 2007. The Transport Committee published its scrutiny of the draft Bill in July 2007; the Government responded to the Committee in October and published its wider response to the public consultation in November. The Bill completed its Lords stages on 30 January and was published as Bill 67 in the House of Commons on 31 January.

Louise Butcher

BUSINESS AND TRANSPORT

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Summary

The Queen's Speech 2006 included a draft Bill on road transport. The draft Bill was published on 22 May 2007 as the draft *Local Transport Bill*. It was published with a consultation document, explanatory notes and a regulatory impact assessment. The draft Bill was subject to pre-legislative scrutiny by the House of Commons Transport Select Committee in June-July 2007 and the Committee published its report on 26 July. The public consultation remained open until 7 September. The Government published its response to the Committee's report on 17 October.

The Queen's Speech 2007 announced "legislation to tackle congestion and improve public transport". The Government published its response to the public consultation on the draft Bill on 14 November 2007 along with an impact assessment, the Bill and explanatory notes. The Bill makes the legislative changes necessary to implement:

- the proposals in the December 2006 policy paper *Putting Passengers First*, on bus reform, including changes to make it easier for local authorities to establish bus quality contracts;
- changes to local transport governance, as highlighted in the local government White Paper and the *Eddington Transport Study*, including the ability to make new integrated transport authorities and to change the boundaries of existing ones;
- changes to make any local road charging schemes workable within a broader interoperable, framework;
- changes to the powers and responsibilities of the traffic commissioners; and
- a new body to champion bus passengers.

The Bill was given Second Reading in the House of Lords on 20 November 2007, it went through Grand Committee on 6, 12 and 17 December, Report stage on 16 January and Third Reading on 30 January. There were several amendments made to the Bill in the Lords, including: the introduction on the face of the Bill of TUPE arrangements for employees of bus companies in areas where a local authority decide to adopt a Quality Contracts scheme; transitional protections in case of the same; provision to change passenger transport authorities/executives into integrated transport authorities/executives; and a new clause to bring section 36 of the *Disability Discrimination Act 1995* into effect, relating to wheelchair users and taxis used for community services.

The Bill applies to England and Wales; a limited number of provisions also apply to Scotland and others to Northern Ireland. These are listed in clause 123 of the Bill.

Information on the Bill's progress and copies of the Bill and Explanatory Notes are available at: <http://services.parliament.uk/bills/2007-08/localtransporthl.html>

Information on the draft Bill and the consultation process can be found on the Department for Transport's website: <http://www.dft.gov.uk/pgr/regional/localtransportbill/>

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I Introduction

A. Title of the Bill

The 2006 Queen's Speech announced that the Government intended to publish a draft *Road Transport Bill* to: "support the Government's efforts to tackle congestion and improve public transport" by:

Reforming the existing powers that allow the development of local road pricing 'pilot' schemes that will tackle congestion where it is already a problem or soon will be.

Enabling local authorities to improve the standard of bus services in their areas. Ministers have closely examined successful services and intend to set out proposals on future policy shortly.

Reforming Passenger Transport Authorities and Executives, to enable a more coherent approach to transport to be taken in major English cities.¹

The Government stated at the time that a national road pricing scheme covering all roads would not be possible under these proposals. Should the Government decide to go ahead with such a scheme, further primary legislation would be needed and there would be a 'full debate'.²

On 14 May 2007 the then Parliamentary Under Secretary of State for Transport, Gillian Merron MP, wrote to the Chairman of the House of Commons Transport Select Committee, the Hon. Mrs Gwyneth Dunwoody MP, indicating the imminent publication of a draft Bill for pre-legislative scrutiny by Mrs Dunwoody's Committee. The letter also stated that the name of the Bill had been changed, from the draft *Road* to *Local Transport Bill*. Ms Merron gave the following reasons for the change of name:

...it has become increasingly apparent that the title 'Local Transport Bill' would better suit the Bill's purpose and content. In particular, the provisions will have a strong focus on empowering local authorities to address local transport challenges in a manner that suits particular local circumstances and priorities.³

When the Transport Committee considered its report on the draft Bill (see below for more details), Mr Phillip Hollobone, one of the Conservative Members on the Committee, proposed that the Committee recommend changing the title of the Bill to the *Local Public Transport and Road Pricing Bill* in order to "better reflect the actual content of the Bill". The Committee voted against the change.⁴

¹ Draft *Road Transport Bill* 2006-07: <http://www.commonleader.gov.uk/output/page1792.asp>; reference to this being called a draft 'road' transport bill has since been removed from the website

² *ibid.*

³ emphasis in the original: Letter from Gilliam Merron MP to Mrs Gwyneth Dunwoody MP, 14 May 2007 (DEP 07/1138)

⁴ Transport Committee, *The draft Local Transport Bill and the Transport Innovation Fund* (ninth report of session 2006-07), HC 692, 3 August 2007, formal minutes, p116

B. Consultation on the draft Bill

On 22 May 2007 the Department for Transport published the draft Bill for consultation. A press notice stated that the purpose of the draft Bill was to “help improve public transport across the country and cut congestion in our towns and cities”. The draft Bill set out proposals to “restructure how local transport is delivered within communities. It would mean that the travelling public could benefit from local authorities taking local action to meet local transport needs”.⁵

The draft Bill was published in four volumes: a consultation document, the Bill, the Explanatory Notes, and the Regulatory Impact Assessment (RIA):

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

The public consultation on the draft Bill closed on 7 September 2007. The Government published a separate consultation document on further changes to the powers of the traffic commissioners on 26 July 2007; it closed on 15 October.⁶ The public responses to both consultations were published on 8 November as volume two of the Government’s response to the consultation.⁷ A further consultation on strengthening bus passenger representation was published on 4 December.⁸

C. Pre-legislative scrutiny

Following the publication of the draft Bill on 22 May 2007 the Transport Select Committee announced its intention to scrutinise it and publish a report by the end of the Parliamentary session on 26 July.⁹ The Committee held oral evidence sessions over four afternoons between 13 June and 11 July and received written evidence from almost sixty organisations in spite of the tight timeframe. In its final report the Committee stated that it was “disappointed with the timing of the publication of the draft Bill. It has not in our view left time for a very detailed analysis either on our part or on the part of witnesses”.¹⁰ The Committee’s views on the contents of the draft Bill are given in the relevant sections, below.

II Traffic Commissioners

A. Background and proposals in the draft Bill

The traffic commissioners were set up under the *Road Traffic Act 1960*; the current legislation is contained in section 4 and Schedule 2 to the *Public Passenger Vehicles Act*

⁵ DfT press notice, “Draft Bill to improve public transport and tackle congestion”, 22 May 2007

⁶ DfT, *Strengthening local delivery – modernising the traffic commissioner system*, 26 July 2007: <http://www.dft.gov.uk/consultations/closed/trafficcommissioners/>

⁷ DfT, *Government’s response to the consultation on the draft Local Transport Bill* (Vol. 2), 8 November 2007: http://www.dft.gov.uk/162259/165237/299192/vol2_summaries.pdf

⁸ DfT, *Options for strengthening bus passenger representation: consultation paper*, 4 December 2007: <http://www.dft.gov.uk/consultations/open/buspassenger/>

⁹ Transport Committee press notice, “Draft Local Transport Bill: call for evidence”, 22 May 2007 (PN 36/2006-07)

¹⁰ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, para 11

1981. The commissioners are appointed by the Secretary of State for Transport and are each responsible for a traffic area. There are currently eight such commissioners.¹¹ They have the following responsibilities:

- licensing public service vehicle (PSV) and heavy goods vehicle (HGV) operators;
- playing a role in registering and regulating local bus services;
- granting permits to operators of not-for-profit community transport services;
- hearing appeals against the impounding by the Vehicle and Operator Services Agency (VOSA) of illegally-operated goods vehicles; and
- determining whether applicants for PSV and HGV licences are fit persons to hold such licences.

The draft Bill did not make any changes to the commissioners' powers regarding commercial vehicles, drivers and operators; as such the rest of this section is devoted to the changes to the role of Senior Traffic Commissioner (STC) and the responsibilities of the commissioners for bus services. That said, in its report the Transport Committee noted the comments of the commissioner for the North East, Tom Macartney, and recommended that the Bill include a power for VOSA to impound public services vehicles (i.e. buses) in much the same way that it can at present for HGVs.¹²

1. Senior Traffic Commissioner (STC)

The Senior Traffic Commissioner (STC) is currently Philip Brown; he is also the commissioner for the South Eastern and Metropolitan Traffic Area and has been the STC since March 2003. The role of STC is not a statutory one and has evolved on a non-statutory basis over the past twenty years.¹³ The STC's current duties include the promotion of good practice and consistency amongst his colleagues.¹⁴ The draft Bill proposed putting the existing role of the STC on a statutory footing:

The provisions would create a new power for the STC to issue guidance and general directions to the TCs, covering any aspect of the conduct of their functions. The TCs would be required to comply with any directions, and to have regard to any guidance. The STC would be required to consult a number of interested parties before issuing any directions or guidance.¹⁵

The draft Bill also proposed replacing the existing power of the Secretary of State to issue guidance to the commissioners with a power to issue guidance to the STC only.¹⁶

¹¹ a list of the current commissioners with their contact details is available here: <http://www.dft.gov.uk/pgi/roads/tpm/trafficcommissioners/publicationscheme/trafficareaofficescontactdetails>

¹² op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, paras 20-21

¹³ *ibid.*, Ev 233

¹⁴ DfT, *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), Cm 7043-I, May 2007, para 6.6: <http://www.dft.gov.uk/consultations/closed/localtransportbill/consultationdoc>

¹⁵ *ibid.*, para 6.9

¹⁶ *ibid.*, para 6.10

2. Responsibilities for buses

The traffic commissioners' powers include the ability to attach conditions to a bus operator's licence and if an operator is not running the service as registered, the commissioner could become involved. The commissioners cannot, however, tell an operator to run a particular service or stop in a particular place.

The commissioners have the power to fine bus operators between one and 20 per cent of their profits for failure to operate services in accordance with registered details under powers in sections 155 and 158 of the *Transport Act 2000*. The commissioners gained other responsibilities under the 2000 Act – they are also responsible for:

- compliance of the bus operators with quality partnership agreements made with the local authorities;
- compliance with the agreements between the operators and the local authorities on through ticketing;
- the dissemination of information; and
- using traffic regulation powers for the purpose of reducing or limiting noise or air pollution.

The draft Bill proposed several changes to the bus functions of the traffic commissioners, in particular as regards the attachment of conditions to operators' licences and powers where bus services are not operated as registered. As stated above, the commissioners already have the power to attach conditions to a bus operator's licence if they fail to comply with certain requirements applying to local bus services or maintaining their vehicles in a fit and serviceable condition. The draft Bill proposed that, where conditions are attached to a bus operator's licence, they may also be attached to other licences held by the same operator or held by another undertaking within the same group. This was aimed at tackling the problem whereby operators can circumvent licence conditions applying to one subsidiary simply by transferring the relevant services to another subsidiary within the same operating group.

The draft Bill also included a new power whereby the commissioners could require local authorities to attend or give evidence to support their inquiries into poor punctuality and to supply them with information connected with the performance of their network management duties under the *Traffic Management Act 2004*. The commissioners would then consider the evidence and publish a report which could be the precursor to an Intervention Notice under the 2004 Act.

The new proposed role of the commissioners in approving Quality Contracts schemes is dealt with in the Section III on buses, below.

3. Reforming how the commissioners work

On 26 July the Secretary of State, Ruth Kelly, published a further consultation paper on the traffic commissioners. In a written statement, she said:

“Strengthening Local Delivery—Modernising the Traffic Commissioner System” explores the functions and responsibilities of the traffic commissioners in more detail and proposes the creation of a Board of Traffic Commissioners which

would be responsible for ensuring that both the goods vehicle and bus sectors get the attention and resource they deserve.

In particular, the board would champion bus passengers' interests and complaints about the punctuality and reliability of local bus services.

The proposals seek to ensure that the traffic commissioner system is well placed to deliver the proposed new bus functions, alongside its existing responsibilities. The proposed board will also oversee the overall performance of the traffic commissioner system with an enhanced, centralised administrative support network to facilitate bus punctuality monitoring, ensuring that resources are focused on the greatest problem areas.¹⁷

The consultation document identified three problems with the current system:

- The general public is not aware of the commissioners and the work they do as a complaints body and to ensure bus reliability and punctuality;
- There is not enough transparency and consistency in how the commissioners presently operate; and
- Commissioners are recruited essentially for life and there is not enough oversight by the industry of this recruitment process.¹⁸

The consultation offered several options for reforming the system including a new national framework, a new board of traffic commissioners, a clearer role in representing passenger interests, and changing the appointment process of commissioners to allow their contracts to be reviewed (i.e. removing the 'appointment for life'). The proposals appeared to break the regional link between the commissioners and the areas they investigate and to impose a more 'strategic' level of oversight of commissioner activities.¹⁹

4. Comment

In its report, the Transport Committee approved putting the role of the STC on a statutory footing; it also generally approved of the improvements to commissioners' powers as far as bus services are concerned. The Committee was not, however, convinced that the powers could be properly used without a commitment to increased funding and manpower for the commissioners. It was also of the view that part of the problem identified in the Department's consultation (i.e. that the public is largely unaware of the commissioners and their work) could be addressed with better publicity and giving the commissioners their own website.²⁰

On the general point about the commissioners' resources the Committee said:

The traffic commissioners do a vital job in somewhat straitened circumstances; they are few in number and they have to operate on small budgets. This Bill

¹⁷ HC Deb 26 July 2007, c112WS

¹⁸ op cit., *Strengthening local delivery – modernising the traffic commissioner system*, paras 14-20

¹⁹ ibid., paras 35-46

²⁰ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, para 19

greatly increases the powers of the commissioners, and gives them several new duties in relation to bus services. We welcome these provisions of the draft Bill. We do not, however, see how the commissioners will be able to perform these new duties properly without more staff and increased resources. We recommend that the Government increase the resources available to the traffic commissioners in line with their new duties.²¹

While it welcomed the proposal to put the role of STC on a statutory footing, the Committee was concerned that the power of the Secretary of State to issue guidance and general directions to the commissioners, and that of the STC to issue directions to his colleagues, might compromise the commissioners' ability to operate independently as local circumstances dictate.²² The Committee recommended that the extension of the commissioners' powers to attach conditions to bus operators' licences should be amended to allow the commissioners to fine an operator in lieu of an attachment²³ where an attachment would have a severely detrimental effect on services. It also thought that where actions have a detrimental effect on services the transport authority should be given the power to be the bus operator of last resort.²⁴ The Committee was particularly supportive of the plans to enable the traffic commissioners to request information from bus operators and local authorities and to take remedial measures against either when they are failing.²⁵

The Committee was not, however, happy about the consultation on the commissioners, which the Secretary of State announced to the Committee when she gave her oral evidence on 11 July. In its report the Committee criticised both the timing of the publication and the proposals themselves. On the timing, it stated that:

It is extremely bad practice for the government to announce, in the middle of its own consultation and at the end of our inquiry, another consultation on matters which are included in the draft Bill. Some of the changes the Secretary of State indicated might be in the consultation were mooted seven months ago; with a little planning and foresight they could perfectly well have been incorporated into the present consultation exercise.²⁶

As for the contents of the consultation, and in particular the proposal to set up a board of traffic commissioners, the Committee was deeply sceptical. It said that it could see “no case for this new quango” and that it appeared “to be a device to enable the Department and the Secretary of State to interfere with the independence of the traffic commissioners”.²⁷

In their evidence to the Transport Committee the commissioners themselves stated that none of the proposals in the draft Bill could be achieved unless they were resourced

²¹ *ibid.*, para 18

²² *ibid.*, para 25

²³ an attachment on an operator's licence might be, for example, a restriction of the local services an operator may run

²⁴ *ibid.*, para 78

²⁵ *ibid.*, para 84

²⁶ *ibid.*, para 4

²⁷ *ibid.*, para 85

sufficiently and there was clarity as to how the proposals were designed to assure the travelling public that local bus services will be both reliable and punctual.²⁸

The bus operators, by and large, welcomed the new powers for the commissioners on bus services but thought that they could be extended further to enable a commissioner to call local transport authorities to account in circumstances where such authorities are:

...demonstrably failing to manage the highway effectively, even if the bus operator is managing to operate a reliable but inefficient service. Such circumstances now arise where an operator is obliged to deploy significant additional resource solely to maintain a punctual and reliable service.²⁹

The bus operators also pointed to the importance of consistency amongst the commissioners and to that end welcomed the placing of the role of STC on a statutory footing, with “a remit to promote consistency between the individual commissioners and appropriate powers to secure greater consistency where this cannot be achieved by cooperation alone”.³⁰

The local authorities, while broadly welcoming the increase in the commissioners’ powers as regards bus punctuality, thought that the specific powers to hold local authorities to account were misplaced. The Local Government Association argued that local authorities, not commissioners, should have enforcement powers over bus operators:

...detailed operator performance should be made available to LTAs to enable them to identify areas of poor performance and develop solutions. This should be accompanied by a system of financial rewards and penalties for operators that will help local authorities to hold them to account, to improve delivery standards and address failure to meet basic quality standards.³¹

Similarly, the Passenger Transport Executive Group (pteg) thought that the new powers for the commissioners should be extended to the PTEs.³²

B. The Bill

1. Government response to the consultation

Following the Select Committee report, the public consultation on the draft Bill and the consultation specifically on traffic commissioner powers, the Government announced that:

- the provisions relating to the STC in the draft Bill would be retained with no change;

²⁸ *ibid.*, Ev. 233

²⁹ *ibid.*, Ev. 127 (Stagecoach)

³⁰ *ibid.*, Ev. 130 (Go-Ahead)

³¹ *ibid.*, Ev. 267

³² *ibid.*, Ev. 200

- there would be a new provision to remove the restriction on there only being one commissioner in each of the English traffic areas;
- it would no longer be a statutory requirement that there is a commissioner dedicated to each traffic area; this would now be an ‘administrative practice’;
- the Scottish commissioner would be retained on a statutory footing and would also be able to take decisions on reserved matters in England and Wales; and
- the Secretary of State will have new powers to dismiss underperforming commissioners in cases where one is “unable, unwilling or unfit” to perform their functions.³³

The response also indicated that the commissioners’ powers to impose penalties and attach conditions to bus operators’ licences where they are failing to meet punctuality targets would be increased. Commissioners would also be able to:

- require an operator to invest in improving the quality of services or providing compensation to passengers where services are not operated as registered; and
- impose financial penalties where an operator failed to provide punctuality data when required to do so.³⁴

The commissioners’ power to impose traffic regulation conditions at the request of the relevant local authority, and where necessary to reduce severe traffic congestion, would be increased, allowing them to make a condition in anticipation of a problem rather than, as is the case at present, in response.³⁵

The Government also took account of the Transport Committee’s views on providing a power to VOSA to impound public service vehicles that are being operated illegally (suggested by one of the traffic commissioners in evidence to the Committee). This is now included in clauses 117-118 of the Bill.³⁶

2. Debate in the House of Lords

At Committee stage in the Lords several attempts were made to **reduce central Government direction to the traffic commissioners and to introduce more consultation**. Lord Hanningfield (Conservative) proposed that, where the Secretary of State varied the number of commissioners (s)he must consult with local authorities and the Senior Traffic Commissioner; the local authorities should also be consulted on the deployment of commissioners; and the requirement in the Bill for the STC to consult the other traffic commissioners when making directions should be removed and replaced with a requirement to consult local authorities.³⁷ Lord Rosser (Labour) proposed that the STC should consult local authorities when making directions to the other

³³ DfT, *The Local Transport Bill: the Government’s response to the consultation* (Vol. 1), 7 November 2007, para 5.16: http://www.dft.gov.uk/162259/165237/299192/vol1_Government_Response.pdf

³⁴ *ibid.*, para 2.21

³⁵ *ibid.*, para 2.33

³⁶ *ibid.*, para 2.35

³⁷ HL Deb 6 December 2007, cc35-36GC

commissioners;³⁸ and Lord Berkeley (Labour) proposed that the STC should be required to take account of the new bus passenger body when making bus decisions.³⁹

Lord Bassam of Brighton, replying for the Government, indicated that there was no need for most of these provisions on the face of the Bill: the Secretary of State would of course consult the commissioners when planning to make changes to their number and that the new bus representations body would make recommendations to the traffic commissioners directly.⁴⁰ He did, however, accept that there might be a case for Lord Rosser's amendment and promised to look at it further and return to the House with "something that works".⁴¹ At Report stage the Government proposed its own amendment to the effect that the **STC should consult local government bodies** before issuing guidance as he thinks fit. It was agreed to and added to the Bill.⁴²

Lord Hanningfield also proposed removing the **Secretary of State's ability to give guidance to the STC** and the requirement that the STC take notice of such guidance. Lord Bassam rejected the argument, stating "it is only a requirement to have regard to such guidance, not to obey directions. There is a difference".⁴³ Lord Berkeley's attempt to introduce a requirement that the Secretary of State should give guidance to the STC on traffic speeds and journey times was also resisted; as was a proposal by Earl Attlee (Conservative) that a traffic commissioner should only be removed by the Secretary of State if (s)he has the agreement of the STC.⁴⁴

On the commissioners' **bus-related powers**, Lord Hanningfield proposed a general power for the traffic commissioners to specify a minimum length of service for registered bus services, which was resisted by Lord Bassam on the grounds that it might prove self-defeating and enable a badly run service to operate longer than it might otherwise have done.⁴⁵ Earl Attlee proposed that the criteria under which a traffic commissioner can take action against a bus operator be tightened up to ensure that the judgement of the traffic commissioners is properly circumscribed. This was not accepted.⁴⁶ However, Baroness Crawley stated that the Government would look at Lord Rosser's amendment to the effect that where a traffic commissioner makes a report on taking action against an operator a copy should be sent to the relevant local authority.⁴⁷ On Report the Baroness proposed a Government amendment that would require the **traffic commissioner to send a copy of any report** on measures he intended to take against an operator to the relevant Integrated Transport Authority. This was added to the Bill.⁴⁸

Baroness Crawley proposed Government amendment 63 which introduced a new clause to allow the **traffic commissioners to charge fees** for the continuation and cancellation

³⁸ *ibid.*, c36GC

³⁹ *ibid.*, c37GC

⁴⁰ *ibid.*, cc38-40GC

⁴¹ *ibid.*, c42GC

⁴² HL Deb 16 January 2008, cc1297-1298

⁴³ HL Deb 6 December 2007, cc42-44GC

⁴⁴ *ibid.*, c45GC and cc46-47GC

⁴⁵ HL Deb 12 December 2007, c166GC

⁴⁶ *ibid.*, c170GC

⁴⁷ HL Deb 17 December 2007, cc203-204GC

⁴⁸ HL Deb 16 January 2008, cc1347-1348

of services, in addition to registration;⁴⁹ and amendment 64B to ensure that any Regulations about penalties made under Section 155 of the *Transport Act 2000* would be subject to the Affirmative Procedure.⁵⁰ They were both added to the Bill.

3. Relevant clauses

The provisions regarding traffic commissioners are contained in Parts 1 and 4 of the Bill, in particular:

- **clause 3** contains the new powers of the **Senior Traffic Commissioner**; and
- changes to the commissioners' **bus powers** are contained in **clauses 43-47** and **clauses 57-60**.

III Bus services

A. Background and proposals in the draft Bill

1. Deregulation – is it delivering?

Bus services in England (outside London) were deregulated by the previous Conservative Government under the *Transport Act 1985*.⁵¹ The Secretary of State for Transport at the time, Nicholas Ridley, stated that the aim of deregulation was "to halt the decline that has afflicted the bus industry for more than 20 years".⁵² Since 1997 the Labour Government has made some changes to the deregulated system – legislating for schemes such as Quality Partnerships and Quality Contracts which would allow local transport authorities more control over bus services – but it has resisted all calls to re-regulate the buses.

Statistics show that since 1985 journeys outside London have fallen whilst journeys in the capital have increased significantly, exceeding the 1985-86 figures. Journeys in the rest of the country have declined, although there are pockets of growth, usually in individual towns and cities like Cambridge and Brighton:

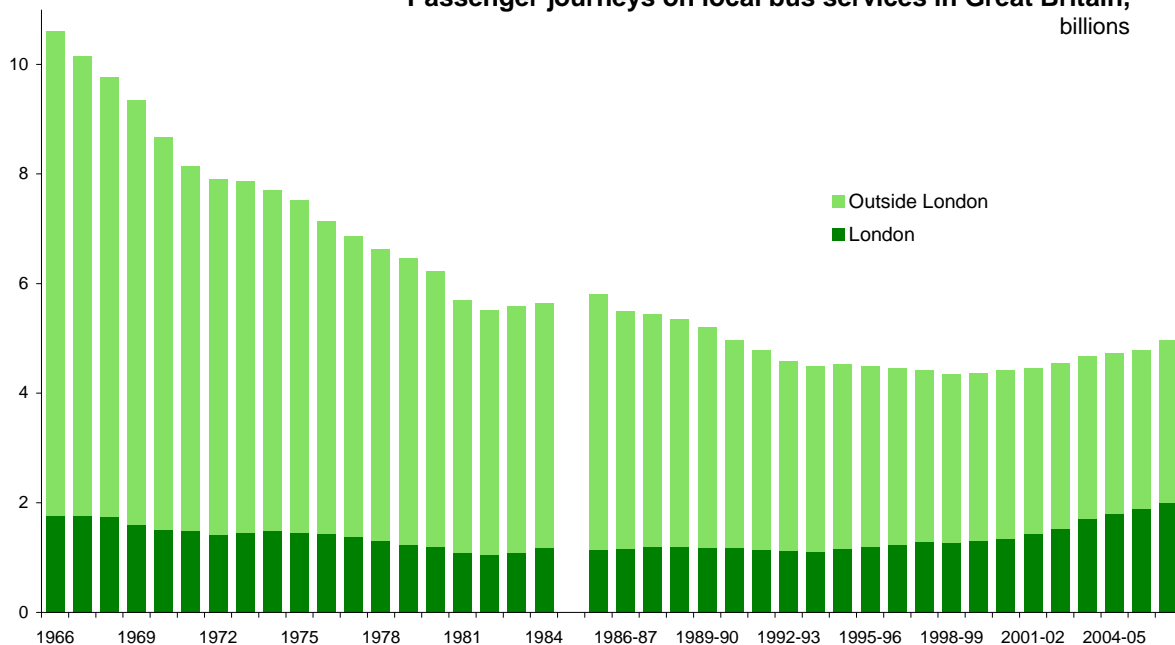
⁴⁹ HL Deb 12 December 2007, cc169-170GC

⁵⁰ HL Deb 17 December 2007, c204GC; section 155 of the 2000 Act empowers the traffic commissioners to impose financial penalties on bus operators who fail to operate their services as registered

⁵¹ for information on the deregulation of the buses, please contact the House of Commons Information Office for a copy of Research Paper 95/57

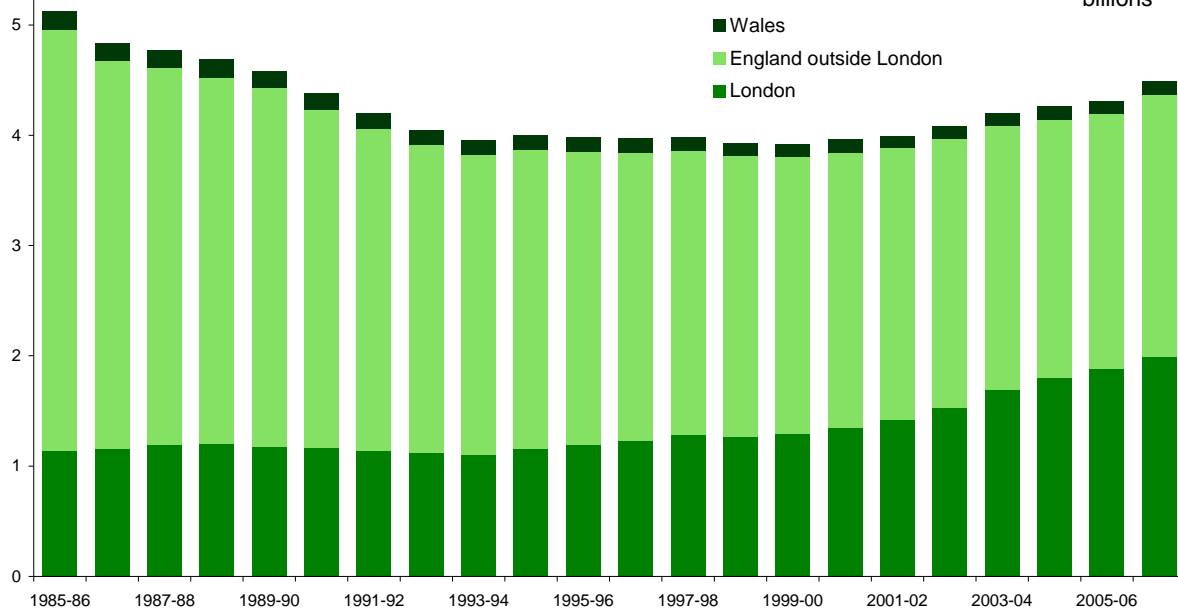
⁵² Second Reading of the *Transport Bill 1985-86*; HC Deb 12 January 1985, c192

Passenger journeys on local bus services in Great Britain, billions



Source: Transport statistics Great Britain, 2007 and earlier.

Passenger journeys on local bus services in England and Wales since 1985-86, billions



Source: Transport Trends 2007, DfT. Trend 3.1b

Further, Government financial support decreased after 1985 but has increased since 2000-01. The 2007 edition of Public Transport Statistics gives the recent trends:

Passenger journeys on local buses in England rose by 4 per cent in the last year. Over the same period, passenger journeys on light rail systems in England increased by 9 per cent.

The Department's PSA on local public transport is, by 2010, to increase the use of public transport (bus and light rail) by more than 12 per cent in England

compared with 2000 levels, with growth in every region. In the six years to 2006/07, public transport usage increased by 15 per cent.

In London, bus and light rail passenger journeys grew by 6 per cent in the last year, whilst in England outside London, it rose by 3 per cent.

Many of the other regions of England saw increases in the number of bus passenger journeys in the last year, as a result of the introduction of free concessionary bus fares for disabled and older (aged 60+) residents. The largest rise was for the East of England region which saw an 11 per cent increase in passenger journeys.

There was an increase in the percentage of low floor buses up from 50 per cent in 2005/06 to 58 per cent in 2006/07. The target agreed with the bus industry is that 50 per cent of buses should be low floor by 2010.

The average age of the bus fleet at 31 March 2007 was 8.1 years. At 31 March 2006, it was 8.4 years.

At 31 March 2007, 45 per cent of buses in Great Britain were fitted with CCTV and 35 per cent in Great Britain outside London were fitted with GPS and other electronic devices for measuring bus punctuality.

Average local bus fares in Great Britain fell by 3 per cent in real terms in 2006/07, largely as the result of the free bus concessionary fares policy implemented in England on 1 April 2006. In London, where concessionary residents already received the benefit, there was a rise of 5 per cent. For Great Britain outside London, there was a fall of 4 per cent.⁵³

The twentieth anniversary of bus deregulation in October 2006 prompted several reviews of how the industry stood and whether it was fit for purpose. Several reports published in 2006 looked at the state of the bus industry and considered whether changes needed to be made, taking into account the general downward trend in patronage levels, the increasing costs to local authorities and the repeated complaints, particularly in the major metropolitan areas outside London, that the present system is not working.⁵⁴ In particular, the Transport Select Committee published a report heavily criticising the current system and calling for the Government to make it easier for local transport authorities to take control of bus services in their areas.⁵⁵ It was hoped that a greater amount of local control would allow authorities, particularly in the major metropolitan areas, to grow services as has been achieved in London, though this has been at a cost.⁵⁶

⁵³ DfT, *Public Transport Statistics Bulletin: Great Britain 2007 Edition Supplement*, 6 September 2007: <http://www.dft.gov.uk/pgr/statistics/datatablespublications/public/annualbulletins/publictransportstatisticsbu107>

⁵⁴ for example: Public Accounts Committee, *Delivery chain analysis for bus services in England* (Forty-third report of session 2005-06), HC 851, 23 May 2006; and NERA, *The Decline in Bus Services in the English PTE areas*, August 2006

⁵⁵ Transport Committee, *Bus services across the UK* (eleventh report of session 2005-06), HC 1317, 26 October 2006

⁵⁶ Public transport support for London rose from £141 million in 1997-98 (£1 million in direct support plus concessionary fares reimbursement and BSOG, see: *Transport Statistics Great Britain 2006*, c6.14; HC

There are a number of reasons why some PTAs, local authorities and passenger groups take issue with the deregulated system and many of them come down to the same basic issue – deregulation has not necessarily meant healthy competition in the bus market. The industry is dominated by the ‘big five’ operators – Arriva, First, Go-Ahead, National Express and Stagecoach – who effectively run monopolies in many areas. Even where two or more of the ‘big five’ operate in the same area, this has not always (or often) lead to streamlined services and cheaper fares. Added to that, a bus operator can register, change or de-register any bus route or service provided he provides the requisite 56 days notice to the relevant traffic commissioner. This leads to a lack of continuity of service. While local authority subsidy for bus services continues to rise,⁵⁷ the bus companies are achieving profits of between six and 18 per cent.⁵⁸ The consequence is that both local politicians and local people feel that they have little or no say in their bus services.

This is not to say that the deregulated system does not have its supporters. In November 2005 the Institute for Economic Affairs published a book by John Hibbs, Emeritus Professor of Transport Management at the University of Central England and a staunch defender of the market system. Professor Hibbs wrote that “after twenty years of comparative freedom the bus industry today has become a commercial success”:

Despite failings in some sectors there are many examples of proactive response to the market, with increased investment and some remarkable developments in man-management and consumer sensitivity. The central importance of costing and pricing for the market has been better understood than ever before and the provision of real-time information is making a new breakthrough in marketing. Some of the small firms snapping at the heels of the larger companies provide poor-quality vehicles which give a poor impression to the public, but the value of open access is recognised by some of the leading figures in the industry, while many small operators offer a high standard of customer care along with lower prices. While the overall proportion of bus travel continues to fall, there are many examples of substantial growth; restructuring of services in Cambridge has led to an increase in patronage of 45 per cent over three years.

What has been sadly lacking ever since 1985 has been a positive attitude on the part of highway authorities. To provide services buses need their own track, like trains. This has to be shared with cars and goods vehicles, but cars are singularly inefficient users of road space and in the absence of road pricing it should be the responsibility of local government to deal with the problem. Buses, however, do not rank high in public status, and motorists, who are voters and ratepayers, resent the introduction of bus lanes and other kinds of priority. A professional gap seems to have grown between urban planners and bus operators reflecting perhaps a distrust of commercial management. After the Transport Act 2000 the quality partnerships were designed to overcome this, but there now seems to be a real possibility that franchise would simply make things worse, by throwing the baby out with the bath water.

Deb 23 March 2006, c496W) to £849 million in 2006-07 (*Transport Statistics Great Britain 2007*, c6.14; HC Deb 24 May 2007, c1451W)

⁵⁷ *ibid.*, para 58 and table 7

⁵⁸ *ibid.*, para 60

The real problem facing the passenger and freight transport industry, whether by bus, car or train, is the prospect of falling overall motoring costs and rising fuel prices forecast over the coming decade. Subsidy, which is an inevitable consequence of franchise, can be no answer to this. Only an industry made up of professional, profit-seeking businesses can hope to meet the challenge, supported and respected by local government planners.⁵⁹

Professor Hibbs added to this argument in comments to a conference on bus deregulation in January 2006 when he said that “those who have a commercial interest in providing the service that customers want, at acceptable levels of price and quality, are more likely to succeed than any bureaucratic organisation which has little to gain from success”.⁶⁰ At the same conference Roger French OBE, Managing Director of the Brighton and Hove Bus Company, one of the country’s more successful bus operators, also made the case for the deregulated structure:

Deregulation was needed to escape the downward spiral of reliance on escalating public subsidy and an increasing milking of routes with commercial potential to cross subsidise the losses of no-hope routes. It would work well were it not for the growing scourge and distortion to the transport market caused by increasing road congestion. This calls for state intervention through pricing or supply of road space.

If local authorities use their skills to innovate in the provision of road space, bus stop infrastructure, management and enforcement of traffic and parking with sensible pragmatic transport orientated land use policies and planning obligation, as bus companies use their best skills and endeavours to innovate in frequency delivery, fares and tickets, vehicle design, customer service, marketing and communications then the whole is definitely greater than the parts.⁶¹

This view was echoed by others from areas where the deregulated system has been considered a success, such as Cambridgeshire, Oxfordshire and York.⁶²

In December 2006, after an extensive review of the bus sector and in response to the many criticisms of the bus industry, including in part the longer term impact (or lack of it) of the measures in the *Transport Act 2000* the Government published a policy paper, *Putting Passengers First*. In his introduction to the document the then Secretary of State for Transport wrote:

...in too many places the current framework is still not delivering the service that passengers rightly expect. If we do nothing, we risk bus services declining in too many of our communities.

Local authorities and bus operators in areas such as London, York and Brighton have shown just how much can be achieved by harnessing the strengths of the private sector in a way that meets local needs. We are now setting out our

⁵⁹ John Hibbs, *The Dangers of Bus Re-regulation*, Institute of Economic Affairs, November 2005, pp65-66

⁶⁰ Professor John Hibbs, paper for: *Landor conference on Bus Deregulation*, 26 January 2006

⁶¹ Roger French OBE, synopsis of paper for: *Landor conference on Bus Deregulation*, 26 January 2006

⁶² in evidence to the Transport Committee, 21 June 2006, see: op cit., *Bus services across the UK*, Ev. 1 and Qq1-76

proposals to enable more areas to replicate those successes: not returning to the old days of nationalisation, but putting in place a balanced package of measures that will deliver a sustainable long-term future for the bus sector by putting the needs of the passenger first.

One size will not fit all. Different areas will require different arrangements to ensure that bus services improve. But one thing is universal: both local authorities and the bus operators must ensure that they put the passenger first.⁶³

The paper summarised the Department's proposals as follows:

enhancements to the existing arrangements for partnership schemes between local authorities and bus operators, allowing statutory schemes to cover minimum frequencies, timings, and where appropriate maximum fares. Voluntary agreements would be subject to a new legal test which could permit multi-lateral arrangements between a local authority and more than one operator, provided that this is in the public interest;

making quality contract schemes a realistic option, while ensuring that these schemes can only be brought forward where the benefits are sufficient to justify them, and safeguarding the legitimate interests of bus operators;

working with stakeholders to develop a new performance regime in which operators provide punctuality data to their local Traffic Commissioner, and which operates within the new performance framework for local areas announced in the Local Government White Paper to hold both local authorities and operators to account for their contribution to the performance of local bus services;

giving more opportunity to the community transport sector, which plays a key role in many rural and other areas where services cannot be provided on a fully commercial basis; and

considering the scope for refocusing the current bus subsidy regime to ensure it remains targeted as effectively as possible and supports the Government's environmental objectives.⁶⁴

2. Quality Partnerships

Under the deregulated structure any holder of a public service vehicle (PSV) operator's licence may operate bus services, having first registered various details with the relevant traffic commissioner. The commissioners are responsible for enforcing compliance with these registered details, including standards of reliability and punctuality. The Government legislated for more local authority control of bus services in the *Transport Act 2000*. This provided additional powers for local transport authorities to implement two types of scheme.

⁶³ DfT, *Putting Passengers First*, December 2006, p5:
<http://www.dft.gov.uk/pgr/regional/buses/secputtingpassengersfirst/pdfputtingpassfirst>

⁶⁴ *ibid.*, p7

The first of these is a Quality Partnership scheme, which can involve multiple operators in a single scheme and can be enforced by the relevant commissioner. A number of local authorities have chosen to enter into non-statutory, voluntary partnership agreements with individual bus operators in their areas. Typically, these agreements involve investment by the local authority in improved facilities for buses, and by the operator in providing better quality vehicles or services. Only one Quality Partnership scheme has been made so far.

The draft Bill proposed the following changes to Quality Partnerships:

- To allow Partnership schemes to cover minimum frequencies, timings and maximum fares, as appropriate; any provision on maximum fares would need to include a process for agreeing the fare level with the operators concerned;
- To allow new facilities and standards in a Partnership scheme to be phased in at pre-arranged intervals, rather than all having to be put in place simultaneously; and
- To replace the requirement that Partnership schemes must "implement the policies set out in [the local authority's] bus strategy" with a requirement that they should contribute to the implementation of their local transport policies. This proposal reflects the fact that a number of local transport authorities are exempt from the requirement to produce bus strategies, and that, under the proposals described below, PTAs would no longer be required to produce separate bus strategies.⁶⁵

3. Quality Contracts

The second type of scheme legislated for in the *Transport Act 2000* is a Quality Contracts scheme, which involves suspending the deregulated market in a specific area. Under such schemes, the local transport authority lets exclusive contracts to operators through a competitive tendering process, to run the services specified by the scheme.

The main issue with Quality Contracts schemes is essentially that none has ever been implemented. It has long been assumed that the reason for this lies in the wording of the 2000 Act. In order to implement a Contracts scheme, the applying local authority must meet the statutory requirement that the making of a scheme is 'the only practicable way' of implementing their bus strategy. This is not the same thing as 'the only possible way'. The Department's guidance on Quality Contracts explains:

It is not necessary for [a local transport authority or 'LTA'] proposing a QC scheme to have tried all other methods of delivering their policies and for those methods to have been seen to fail. Experience encountered by other LTAs in similar circumstances may in some cases be relevant. However, to set up a QC scheme is likely to involve a considerable amount of time and resources and should not be pursued if there are practicable alternatives that could produce comparable outcomes.⁶⁶

⁶⁵ op cit., *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), para 3.20

⁶⁶ DfT, *Quality Contracts for bus services: Guidance for English local authorities*, 4 February 2005, para 12: <http://www.dft.gov.uk/pgr/regional/buses/quality/qualitycontractsforbusservic3577>

The draft Bill proposed replacing the ‘only practicable way’ test with a new set of ‘public interest’ criteria and a new requirement for the local authority to publish a consultation document setting out various details of the proposed scheme. It proposed further changes to Quality Contracts, including:

- To reform the current arrangements for approval of Quality Contracts schemes in England (outside London) by creating a new Approvals Board for Quality Contracts schemes, chaired by a traffic commissioner (who would generally be the Senior Traffic Commissioner). The draft Bill also provided for a right of appeal to the Transport Tribunal against decisions of the Approvals Board;
- To allow individual contracts within a Contracts scheme to run for up to ten years, in place of the current five-year limit, and allow a Contracts scheme to be extended beyond the ten-year limit;
- To replace the link to the local authority's bus strategy with a link to local transport policies in England and Wales (outside London), as proposed for Quality Partnership schemes; and
- To allow the phasing-in of Contracts schemes in England and Wales (outside London), as proposed for Quality Partnership schemes.⁶⁷

4. Competition

Where local authorities wish to enter into negotiations with two or more operators to implement a more coherent pattern of services (voluntary partnership agreements or VPAs), they must ensure that agreements are compatible with UK and EC competition law, as set out in the *Competition Act 1998* and Articles 81 and 82 of the Treaty establishing the European Community respectively. There is also an industry-specific test set out in Schedule 10 to the *Transport Act 2000*.

Chapter I of the 1998 Act prohibits agreements or concerted practices that would prevent, restrict or distort competition. It applies to anti-competitive agreements between bus operators and in some circumstances it could also apply to agreements between operators and Passenger Transport Executives (PTEs). This should not, however, prevent bus operators forming agreements, only where such agreements damage competition. The Act does, however, recognise that some agreements that have anti-competitive effects may still be beneficial for passengers and such agreements are allowed where they meet specific criteria such as improving production or distribution (for example, increasing the number of bus services), or promoting technical or economic progress (for example, improving the quality of bus services). Chapter II prohibits the abuse of a dominant position by a bus operator;⁶⁸ ‘abuse’ would be where an operator exploits their position to leave passengers worse off, for example with predatory pricing.⁶⁹

⁶⁷ *ibid.*, para 3.26

⁶⁸ a dominant position is defined as a 40 per cent share of the market

⁶⁹ OFT, *The OFT and the bus industry*, pp3-6:
http://www.of.gov.uk/shared_of/business_leaflets/general/of397.pdf

The 2000 Act created a competition test that applies when local authorities propose Quality Partnerships, make ticketing schemes, or offer services to tender. A bus operator can make an application for the OFT to look at such a scheme or the OFT can launch such an investigation itself. The test is whether one of these schemes would have a significantly adverse effect on competition. If it does it can still pass the test if it:

- secures improvements in the quality of vehicles or facilities used;
- secures other improvements in local services of substantial benefit to users of local services; or
- reduces or limits traffic congestion, noise or air pollution.

The effect on competition must be proportionate to the achievement of these objectives.⁷⁰

The draft Bill proposed revising the Schedule 10 test in the 2000 Act and using the revised test to replace the Chapter I test in the 1998 Act. The consultation document explained:

Under proposals in the draft Bill (clause 24 and Schedule 2), a “revised Schedule 10 test” would apply to agreements between local authorities and more than one operator. It would also apply to a series of apparently bilateral agreements between local authorities and *individual* operators which, taken together, might have the effect of preventing, restricting or distorting competition.

It would operate in a similar way to the Schedule 10 test. It would apply to any voluntary partnership agreement that would otherwise be subject to the test in section 9 of the Competition Act 1998, that is to say an agreement which has as its object or effect the prevention, restriction or distortion of competition. The revised test would be passed if the agreement would achieve the intentions described in paragraph 2(3) of the Schedule 10 test (ensuring improvements to services for passengers or limiting traffic congestion, noise or air pollution) and also satisfied part (b) of the Competition Act test. Subject to final conclusions about the role of the Office of Fair Trading, it would fall to the parties to the agreement to demonstrate that the test had been met.⁷¹

5. Bus passenger representation

Unlike rail passenger transport, there is currently no national statutory representative body for bus passengers. There are, however, a number of non-statutory groups that deal with bus travel:

- **Bus Users UK** is a small, independent organisation formed to give passengers a voice. It is partly funded by the industry, and partly through membership subscriptions;⁷²
- The **Bus Appeals Body** was set up to deal with individual passengers unhappy with the way their complaint had been dealt with by a particular bus company. It

⁷⁰ *ibid.*, pp8-9

⁷¹ *op cit.*, *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), box 3.3

⁷² <http://www.bususers.org/>

was launched jointly by the Confederation of Passenger Transport UK and Bus Users UK;⁷³

- There are **TravelWatch** organisations based in various regions of England. These are community interest groups, which exist to promote the interests of users and potential users of public transport in their regions;⁷⁴ and
- There are also various other regional and local passenger groups, varying in profile and capacity.

There was no provision for a statutory bus passenger body in the draft Bill; the Transport Committee recommended that this was an omission that should be rectified in the Bill proper:

There is no statutory bus passenger advocate body for England, such as PassengerFocus, which is established in law to protect the interests of rail passengers. There are non-statutory bodies that operate in some regions, such as TravelWatch North West; but they do not have any systematic funding. Bus Users UK, though it serves a useful function, is funded by the bus operators. Mr John Moorhouse from TravelWatch North West advocated putting his organisation and others on a statutory footing. Transport 2000 also argued for the establishment of a public-facing, statutory complaints body and bus regulator, which could include the traffic commissioners. In its written evidence to us the Department stated that passenger groups should continue on a local level and that there is not "any particular advantage" from creating a statutory body, while the Secretary of State told us that there might be a bigger complaint-handling role for the traffic commissioners.

The existence of various non-statutory complaints bodies is evidence that there is genuine demand for an independent, publicly-funded body to hear the complaints of bus users. We recommend that the Government take powers in this Bill to establish such a body.⁷⁵

In its response to the consultation the Government acknowledged that there was 'broad support' for greater passenger representation, though there were different views on what was required. Consequently, the Government indicated that it had decided that "the time is now right to provide a more prominent and influential voice for the bus passenger" and that such a body would be "independent of the traffic commissioners and would have a strong public role, and its activities should be heavily informed by the views of passengers".⁷⁶ Consequently, powers have been included in the Bill to allow relevant functions to be assigned, in secondary legislation, either to a new body or to the existing Rail Passengers' Council (called Passenger Focus).⁷⁷

⁷³ <http://www.busappealsbody.co.uk/>

⁷⁴ e.g.: <http://www.accesssouthwest.org/>; <http://www.travelwatch-northwest.org.uk/>; and <http://www.travelwatcheastmidlands.org.uk/>

⁷⁵ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, paras 30-31

⁷⁶ op cit., *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 5.7

⁷⁷ <http://www.passengerfocus.org.uk/>

A consultation document on the possible options for bus passenger representation was consequently published on 4 December 2007.⁷⁸ Views are welcomed until 17 March 2008. The paper proposes several options:

- The remit and functions of Bus Users UK could be amended;
- A new, standalone bus passenger champion body could be created; or
- Some form of multi-modal passenger transport authority could be established – either by adding to the remit and functions of the existing Passenger Focus (rail) or by creating an entirely new body.⁷⁹

6. Comment

The Transport Committee broadly welcomed the changes in the draft Bill in the hope that they would allow local authorities a greater degree of control over the bus services in their areas by making Quality Contracts a real possibility at last. The Committee did not, however, think that the Government had given enough thought to whether the bus operators would make a legal challenge to any Contracts scheme and how such a challenge could be pre-empted:

The Government is confident that any legal challenge to a quality contract scheme would fail. However, even an action which is unlikely to succeed could delay the implementation of a quality contract for years. Further claims for compensation under the Human Rights Act could then follow. If these legal actions are unsuccessful, there is the risk that the operator will cease to run services, with serious implications for passengers and staff. We recommend that the Government give further consideration to the ways in which the Bill might be amended so as to offer further reassurance to transport authorities faced with sabre-rattling bus company lawyers. Such measures could include compulsory purchase powers given to the transport authority to buy depots and the right of the transport authority to be the bus operator of last resort. This would also have the benefit of giving a public sector benchmark for competing bus operators.⁸⁰

It was also concerned that not enough thought had gone into how operators and authorities would manage the transition into a Contracts scheme and urged the Government to make provision in the Bill for transitional protections:

Networks, assets and employees should be protected during any transitional period before the implementation of a quality contracts scheme. We recommend that the Government introduce transitional provisions, or at least the relevant regulation-making powers, into the Bill.

We also recommend that the Government produce guidance on transitional procedures for outgoing operators, including best practice for transfer of employees, protection of assets and assurance of the network until the day of transition.⁸¹

⁷⁸ DfT, *Options for strengthening bus passenger representation: consultation paper*, 4 December 2007: <http://www.dft.gov.uk/consultations/open/buspassenger/>

⁷⁹ *ibid.*, paras 20-44

⁸⁰ *op cit.*, *The draft Local Transport Bill and the Transport Innovation Fund*, para 48

⁸¹ *ibid.*, paras 51-52

Although the Committee broadly approved of the new criteria for making a Contracts scheme, it did think that the provision in clause 7(6) of the draft Bill, to permit an authority to make a scheme if they are confident that it will merely reduce an ongoing decline, “lacks ambition”. The Committee recommended that the basis for a Contracts scheme to go ahead should be that it “will improve significantly the predicted passenger numbers”.⁸² The Committee was less keen on the Contracts approvals process and rejected the idea of an independent Approvals Board being able to override decisions taken by local transport authorities. It recommended that the powers of the Approvals Board be limited to checking whether or not the transport authority has followed the correct procedure and behaved “in a reasonable way”. It also thought that there was potential for the approvals process to drag on for years and was concerned at some of the evidence it received which indicated that Contracts approval could take up to five years. It therefore recommended that a time limit for approvals should be included in the Bill.⁸³

The Committee commented on two other bus-related matters not included in the draft Bill, namely the Bus Service Operators’ Grant (BSOG) and a bus complaints body. The Committee was of the view that BSOG needs reforming and that such changes should be consulted on and included in the Bill proper; and that the lack of a statutory bus complaints body was an anomaly which should also be corrected in the Bill.⁸⁴

In their evidence to the Transport Committee the bus operators indicated a mixed response to the measures in the draft Bill. The Confederation of Passenger Transport, which represents bus operators across the UK, stated that there should be better checks and balances for any Quality Partnership schemes to ensure that they are not too ‘one sided’:

Given the potential one-sided nature of these schemes, we would like to see checks (as well as the competition test) on the new powers for authorities over timings and frequencies. In particular, we believe there should be a right for operators to appeal against a Quality Partnership Scheme on the grounds that it imposes an unfair burden on them. As things stand, the only option for an operator who could not meet the standards laid down by the scheme from the revenue available to him would be to cease running the routes concerned. This might be acceptable in the case of a low quality operator who copies another firm's route when conditions are favourable, but would be unacceptable if the only operator serving a route (or a town) were forced to give up.

We do not want to see provisions that can be used by authorities to set up quality contract schemes in all but name, without the inconvenience of an approvals process or a limited term.⁸⁵

The CPT remains firmly opposed to Quality Contracts schemes, as do the five big bus operating companies.⁸⁶

⁸² *ibid.*, para 57

⁸³ *ibid.*, paras 62-63

⁸⁴ *ibid.*, paras 31 and 34

⁸⁵ *ibid.*, Ev. 153

⁸⁶ *ibid.*, Ev. 153 and Qq104-177

The PTAs, while broadly supportive of the changes in the Bill on bus services, nevertheless took issue with some of the particulars especially as regards the approvals regime for Quality Contracts. Pteg and the local authorities argued that they should be given the power of approval, not the traffic commissioners. Their views were summarised in the Transport Committee report:

Mr Roy Wicks, Chairman of pteg, told us that the promoting local authority should be the final arbiter in approving a scheme and that the appeal would be a judicial review. He argued that the draft Bill sets out a number of stringent criteria that an authority must meet in order to be able to implement a quality contract and that any such scheme would be embedded in the transport strategy for that area; this should pre-empt the need to make the same case to a board that would have no democratic accountability or local knowledge. The local authorities also told us that they were happy being 'judge and jury in their own courts'; Councillor Page from Reading Council said: "it's called democracy". Mr Wicks thought that an independent approvals board could work if it performed the same kind of role that the Office of Rail Regulation (ORR) does for the railways—checking that the process has been carried out correctly—but not making a judgement on the scope, content or appropriateness of a scheme.⁸⁷

B. The Bill

1. Government response to the consultation

The Government's response indicated a change in all of the bus-related areas of the Bill, as compared to the draft Bill. On competition and its application to VPAs, the Bill retains the revised competition test as set out in the draft Bill with some minor amendments to the terminology.⁸⁸ More substantial changes were made to the provisions on Quality Partnerships so that:

- provisions as to the frequencies and timings of services, and maximum fares, may only be included in a Partnership where there are no "admissible objections" from relevant bus operators;⁸⁹ and
- the traffic commissioner would be able to refuse registrations in an area where there is a partnership scheme if the relevant transport authority requests it.

The Government's intention is that, taken together, these changes would "help ensure that the QPS framework cannot be used by local authorities to impose unreasonable requirements on bus operators in relation to frequencies, timings and fares".⁹⁰

The Government also made changes to the provisions for Quality Contracts schemes, though it retains the main aspects of the new regime set out in the original draft Bill. The main changes were:

⁸⁷ *ibid.*, para 59

⁸⁸ *op cit.*, *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 2.5

⁸⁹ there would be more detail in subsequent regulations

- the Secretary of State would have the power to make rules and regulations specifying procedures and deadlines for the Approvals Board process – this was intended to tackle the criticisms by the PTEs and the Transport Committee that the process could take several years;
- agreement will no longer be required from the Approvals Board in order to continue a Quality Contract – this could mean that once in place a Contracts scheme could be renewed in perpetuity;
- the Approvals Board would be chaired by the relevant traffic commissioner for the local authority area in most circumstances;
- a scheme will no longer have to satisfy the ‘competition test’ but, rather, a broader ‘proportionality test’ which states that “any adverse effects of the proposed scheme on operators will be proportionate to the improvement in the well-being of persons living or working in the area to which the proposed scheme relates” and to the other requirements set out in that clause; and
- the traffic commissioner would only be able to register a service outside a Contracts scheme if the local authority gave its consent.⁹¹

One of the areas that most concerned the Transport Committee when it scrutinised the draft Bill was the lack of any mention of transitional protections and procedures where an area decided to implement a Contracts scheme. In its response the Government proposed two things:

- a regulation-making power would be taken on the face of the Bill to allow for regulations to be made during the period of transition to a Quality Contracts scheme to enable greater flexibility for authorities to procure services where an incumbent operator withdrew from the market at short notice in the transitional period;⁹² and
- a provision to ensure that TUPE would apply where staff transfer from one operator to another as a result of a Contract. This would ensure continuity of employment and terms and conditions of relevant employees and would protect them from dismissal before or after a relevant transfer.⁹³

The Bill also includes a provision to revive a power to enable PTEs to purchase buses to let for hire to operators; this could also be used during transitional periods.⁹⁴

In December 2007 the Department for Transport and the Office of Fair Trading published revised draft guidance on the application of competition law, and the implementation of voluntary agreements, Quality Partnerships and Quality Contracts. The draft guidance will be amended in light of any changes to the Bill made during its progress through parliament and any representations received. There will be a formal consultation on a final draft some time in 2008.⁹⁵

⁹⁰ op cit., *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 2.11

⁹¹ ibid., para 2.16

⁹² this relates to sections 89-92 of the *Transport Act 1985* on tendering for subsidised services

⁹³ op cit., *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 2.16

⁹⁴ ibid., p13; the power was originally contained in the *Transport Act 1968* and removed by the *Transport Act 1985*

⁹⁵ DfT/OFT, *The Local Transport Bill, improving local bus services: draft guidance*, December 2007: <http://www.dft.gov.uk/pgr/regional/localtransportbill/improvinglocalbusservices.pdf>

2. Debate in the House of Lords

At Second Reading in the Lords there was a wide-ranging debate on the arguments for and against **Quality Contracts**.⁹⁶ Members returned to the theme at Committee stage. Lord Hanningfield (Conservative) argued that the planned replacement of the ‘only practicable way’ test with a **new set of ‘public interest’ criteria** should be removed on the basis that Quality Contracts are a step too far towards re-regulation and that they are, in any case, untested:

I am uncertain that quality contracts are the right approach for local transport authorities to adopt. It is all too easy to forget the problems with the regulated market and to assert that the London model provides a paradigm applicable—or, indeed, affordable—in all areas. The amendment seeks to remove revised proportionality criteria when setting up a quality contract, leaving the original with no other practical way for criteria to apply.

It should be borne in mind that there are currently no quality contracts anywhere in the country. The inference is that the nature of the scheme and the interim period before a functioning scheme can operate are not sufficiently attractive prospects for local authorities. Since there is currently no precedent, I contend that the one factor precluding the uptake of quality contracts is the legal uncertainty surrounding the implementation of the scheme. The Bill goes some way to streamlining the appeals process, but I am afraid that the time and resources required will remain an insurmountable barrier.⁹⁷

Lord Bassam of Brighton, responding for the Government, affirmed that Contracts are “very much ... an approach of last resort” and that the changes in the Bill will protect both the public’s and operators’ interests.⁹⁸ Lord Rosser (Labour) proposed that the provisions on Quality Contracts should be amended to give the **final decision on approvals to the relevant local transport authority**, not the independent Approvals Board proposed in the Bill; he also asked whether the Government had received definitive advice on whether the operators could challenge a Contracts scheme under the European Convention on Human Rights and on what grounds a scheme could be taken to the Court of Appeal.⁹⁹ Following a lengthy debate on the amendment, Lord Bassam indicated that the Government believed that the measures in the Bill would satisfy the ECHR and that any challenge in the Court of Appeal would have to be on a point of law and could not attempt to unpick the policy.¹⁰⁰

Other amendments regarding Quality Contracts proposed and withdrawn in Committee were:

⁹⁶ HL Deb 20 November 2007; e.g. Earl Attlee (against), c748GC; Lord Rosser (for), cc756-757GC

⁹⁷ HL Deb 12 December 2007, c115GC

⁹⁸ *ibid.*, c119GC

⁹⁹ *ibid.*, cc121-138GC; Lord Rosser made a similar amendment on Report to remove the role of the approvals board, it was withdrawn following another lengthy debate, see: HL Deb 16 January 2008, cc1322-1330

¹⁰⁰ *ibid.*, c139GC

- requiring that notice of any consultation etc. on a Contracts scheme is published in a talking newspaper;¹⁰¹
- that anyone be allowed to appeal a decision by the Approvals Board;¹⁰²
- that the time limit for Contract schemes be removed entirely;¹⁰³
- that the Secretary of State be required to consult before issued guidance on Quality Contracts, and that such Guidance must be published to be approved by a resolution of both Houses of Parliament;¹⁰⁴ and
- that the traffic commissioners have the power to direct a local transport authority to include a registered service in a Contract scheme.¹⁰⁵

In a letter to Lord Hanningfield after Committee stage, Lord Bassam provided a summary of various scenarios for **how long it would take a local authority to implement a Contracts scheme**. These varied from a 'best case' of 14 months to a 'worst case' of 38 months, most of the delay due to the appeals procedure.¹⁰⁶

In Committee, Lord Rosser proposed several extensions to the measures in the Bill related to **employee transfers and TUPE**. While resisting the amendments Lord Bassam promised to discuss the matter with the relevant Minister.¹⁰⁷ He returned at Report stage with Government amendments to the TUPE provisions; he explained in some detail what the Bill will now do in this area:

In my response at the time to my noble friend, I explained how a transfer from a deregulated bus network to a regulated one under quality contracts would differ from the standard form of transfer of undertaking for which the TUPE regulations were designed. The process could be complex because in most cases we would not be starting with either a service directly provided by a public authority or a service provided under contract to a public authority. I fully accepted that the clause in the Bill did not deal with all possible circumstances and agreed carefully to consider the points made by noble Lords.

No doubt it will be recalled that the existing Clause 38 would provide TUPE protection only to employees who were taken on by a new employer who had won a quality contract. It would not provide for all those employed in providing the existing services to transfer to the new operator. The amended clause would create an obligation so that when an existing local service is discontinued because of a quality contract coming into force, all employees engaged in providing that service would be eligible for transfer to the new operator of that contract on TUPE terms. That change was advocated by nearly all who contributed to the Grand Committee debate.

¹⁰¹ *ibid.*, c139GC (Earl Attlee)

¹⁰² *ibid.*, cc141-142GC (Earl Attlee); Lord Hanningfield made and withdrew a similar amendment on Report, see: HL Deb 16 January 2008, cc1330-1332

¹⁰³ *ibid.*, c143GC; Lord Rosser made and withdrew a similar amendment on Report, see: HL Deb 16 January 2008, cc1332-1335

¹⁰⁴ *ibid.*, cc146-146GC (Lord Rosser)

¹⁰⁵ *ibid.*, cc167-168GC

¹⁰⁶ *Letter from Lord Bassam of Brighton to Lord Hanningfield*, 12 December 2007 (DEP 2008-0001)

¹⁰⁷ HL Deb 12 December 2007, cc149-157GC

Another criticism of the existing clause was that it left unclear many details of precisely which employees would qualify for TUPE terms, particularly where there was not a straightforward correspondence between the existing service and the new service. The amended clause contains provisions to address that issue as well, by means of a power to make regulations to prescribe the process to determine who comprises the existing workforce and those who would be assignable to a new contract. It is proposed that the incumbent operator would be required to provide information to the local transport authority about their current workforce which could be used as a basis for tendering. The successful tenderer would be obliged to employ those workers, provided that they were willing to make the transfer, before looking further afield for employees.

This model depends on a degree of co-operation from the existing operators. First, they will have to supply employment details, suitably anonymised. Provision is made for sanctions if they fail to do so. Secondly, the TUPE provisions will apply only if the relevant services are continued in operation until the transfer date. Noble Lords will be aware that this has difficulties, but it should be borne in mind that an existing operator who will lose its services and employees unless it bids for and wins a contract to keep them going has a strong incentive to play by the rules. An operator that is able to transfer staff on TUPE terms will avoid the redundancy procedures and payments that would otherwise be necessary. We believe that on balance it is worth the risk of some employees potentially losing out in order to create a strong incentive for continuity of service to be maintained. Ultimately, we cannot force operators, in a still deregulated market, to continue providing services that may not be commercially viable.¹⁰⁸

The Government further amended the provisions at Third Reading to introduce an **offence for bus operators who provide misleading information** to local authorities in the run up to a Contracts scheme. It would be a criminal offence, triable in a Magistrate's Court, and subject to a fine of £2,500.¹⁰⁹

Several amendments were debated on **Quality Partnerships**. Earl Attlee (Conservative) proposed that where a Partnership is in place, any service registered in that area, but outside the Partnership, could be subject to a **minimum period of operation**, should the local authority deem it desirable and that, further, the notice period for registering a service should be extended to 90 days (from the current 56). The intention of both of these changes was to introduce further stability into local areas which were investing in bus services under Partnership arrangements.¹¹⁰ Lord Bassam resisted the amendments but did state that the Government is intending to review the existing regulations on local registrations in light of the provisions in the Bill.¹¹¹ Lord Rosser proposed that a **skills requirement** should be included in any Quality Partnership agreement. Baroness Crawley, responding for the Government, stated that this would be covered by the requirements in the EU Driver Training Directive, coming into force in autumn 2008.¹¹²

¹⁰⁸ HL Deb 16 January 2008, cc1335-1339

¹⁰⁹ HL Deb 30 January 2008, cc622-624

¹¹⁰ HL Deb 6 December 2007, cc66-67GC

¹¹¹ *ibid.*, c69GC

¹¹² *ibid.*, cc69-74GC; a GoSkills 'quick guide' to the Directive can be found here: <http://www.goskills.org/UploadedDocs/Publications/1123751840.pdf>

Lord Low of Dalston (Cross-bencher) proposed **removing the right of bus operators to submit ‘admissible objections’** to the inclusion of fares, frequencies and timings in a Quality Partnership agreement.¹¹³ Lord Bassam resisted the amendment¹¹⁴ on similar grounds to those set out by the Transport Committee: that Partnerships need to be just that in order to be attractive and to work; this means that both local authorities and operators must have an equal say.¹¹⁵ Lord Rosser returned to the issue at Report stage proposing to remove the right of operators to object to a particular facet of a Quality partnership. He argued again that such a right to object would in reality act as a ‘veto’ over the local authority. Following a lengthy debate the amendment was rejected by the Government on the same grounds as before.¹¹⁶

Also in Committee, Lord Hanningfield proposed that an authority planning a Quality Partnership should be required to consult any neighbouring authority; Baroness Crawley argued that provisions already exist in the Bill for consultation with ‘relevant’ authorities.¹¹⁷ The Government returned to this issue at Report and made its own amendment to explicitly include **district councils as ‘relevant authorities’ to be consulted** when another authority proposes to make a Quality Partnership. This would rectify an omission in the current legislation.¹¹⁸

Lord Hanningfield also proposed in Committee that when material changes are made by an authority to a Partnership that this should require the scheme to be reviewed; he argued that otherwise there was a danger of authorities changing the terms of a Partnership without an operator’s consent. Lord Bassam responded that a regular review should form part of the initial Partnership agreement and that the amendment was unnecessary.¹¹⁹

On competition issues, the Earl of Mar and Kellie (Liberal Democrat) proposed extending the revised competition test to cover agreements between individual operators that exclude any local transport authority. Lord Bassam stated that the Government was prepared to look at whether anything could be done in this area, though it could not accept the amendment in the form presented.¹²⁰ Lord Bassam put down Government amendments on Report to **extend the new competition test to operator-only arrangements** which had been endorsed and certified by the local transport authority and did not involve price-fixing. These were added to the Bill.¹²¹

Some minor changes were proposed to the planned **public transport user’s committee (PTUC)**. Lord Rosser proposed including a provision about the publicity for PTUC being in an accessible format; while Lord Berkeley proposed that there should be provisions about publicity for PTUC; a guarantee of regional offices; a report requirement for the

¹¹³ *ibid.*, cc76-77GC

¹¹⁴ and other similar amendments tabled on the same theme (e.g. 16A and 19)

¹¹⁵ HL Deb 6 December 2007, c83GC

¹¹⁶ HL Deb 16 January 2008, cc1311-1321

¹¹⁷ HL Deb 6 December 2007, cc90-92GC

¹¹⁸ HL Deb 16 January 2008, cc1321-1322

¹¹⁹ HL Deb 12 December 2007, 113-115GC

¹²⁰ *ibid.*, cc157-159GC

¹²¹ HL Deb 16 January 2008, cc1339-1340

Secretary of State; and a requirement that the STC and the Secretary of State should take account of any recommendations made by PTUC. Lord Bassam stated that he would consider the last proposal about taking account of recommendations.¹²² He returned at Report with a Government amendment to that end, which was added to the Bill.¹²³ Lord Bassam also proposed another Government amendment at Report to introduce a requirement for bus operators to display information about PTUC and for the traffic commissioners to be able to fine operators who do not comply.¹²⁴

In other bus-related matters, Lord Berkeley (Labour) proposed a series of new clauses introducing ‘**tendered network zones**’ for buses across England and Wales, based broadly on the franchise model.¹²⁵ Following a short debate on the merits of such a scheme, he did not press his amendments.¹²⁶ Lord Hanningfield proposed including a new clause in the Bill guaranteeing that local authorities would be properly reimbursed for the new **concessionary fare arrangements** coming into force in April 2008;¹²⁷ while the Earl of Listowel (Cross-bencher) proposed that the statutory concessionary fare scheme be extended to homeless persons.¹²⁸ Lord Rosser moved a group of amendments which would extend the ability of PTEs to: own and lease public service vehicles to community transport operators; be an **operator of last resort** if a Quality Contract ceases, or an operator defaults; and compulsory purchase of bus depots. Lord Bassam resisted two of the changes but pledged to look again at the provisions on ‘operator of last resort’ status for PTEs.¹²⁹ At Report stage Lord Bassam stated that the Government could not support such a power for PTEs.¹³⁰

3. Relevant clauses

Changes to bus services are mostly contained in Part 3 of the Bill:

- **clauses 13-18** contain the provisions on **Quality Partnerships**;
- **clauses 19-40** contain the provisions on **Quality Contracts**, including **clause 37** on **transitional provisions** and **clause 39** on **TUPE**;
- clause 41 deals with the extension of the competition test;
- clauses 68 and 70 deal with the **public transport user’s committee (PTUC)**.

¹²² HL Deb 17 December 2007, cc212-217GC

¹²³ HL Deb 16 January 2008, cc1355-1356

¹²⁴ *ibid.*, cc1357-1360; a further Government amendment at Third Reading extended this duty to Wales, see: HL Deb 30 January 2008, cc629-630

¹²⁵ the proposal is based on a ‘quality network agreement’ scheme long proposed by the Association of Transport Co-ordinating Officers (ATCO), see: <http://www.atco.org.uk/publications/busreformpaper06.pdf>

¹²⁶ HL Deb 6 December 2007, cc63-66GC

¹²⁷ HL Deb 12 December 2007, cc161-166GC; concerns about the way in which local authorities are reimbursed for concessionary fares was raised during the passage of the *Concessionary Bus Travel Act 2007*, for more information see: <http://www.parliament.uk/commons/lib/research/rp2007/rp07-019.pdf> and <http://www.parliament.uk/commons/lib/research/rp2007/rp07-053.pdf>

¹²⁸ HL Deb 17 December 2007, cc218-221GC

¹²⁹ *ibid.*, cc204-208GC

¹³⁰ HL Deb 16 January 2008, cc1349-1351

IV Local transport governance

A. Background and proposals in the draft Bill

1. Current structure

Local authorities are responsible for making and delivering local transport policy. Local government in England (outside London and Metropolitan areas) is structured in two contrasting ways. In parts of England, a single tier 'all purpose council' is responsible for all local authority functions (generally called Unitary or Metropolitan). The remainder of England has a two-tier system, in which responsibility is divided between district and county councils. The transport responsibilities for each structure are as follows:

- **Single tier – Unitary Councils** (e.g. City of York, Thurrock etc): responsible for producing local transport plans, general transport strategy, passenger transport and highways, parking and other revenue collection from transport.
- **Two tier – County Councils** (e.g. Essex County Council): responsible for producing local transport plans, general transport strategy, passenger transport and highways.
- **Two tier – District Councils** (e.g. Uttlesford District Council): responsible for parking and other revenue collection from transport; also responsible for local planning decisions that invariably involve transport issues (e.g., in the case of Uttlesford District Council, all planning applications related to Stansted Airport go through them).

In six major city conurbations in England¹³¹ (Greater Manchester, Merseyside, South Yorkshire, Tyne and Wear, West Midlands and West Yorkshire), transport responsibilities fall to Metropolitan District Councils, Passenger Transport Authorities and Passenger Transport Executives.

Metropolitan District Councils (MDCs) are responsible for roads and traffic in their areas. Each Metropolitan area produces one transport plan, which is jointly produced by all of the metropolitan district councils and the Passenger Transport Authority. This requirement was set out in the *Transport Act 2000*. The strategic planning of passenger transport across the six metropolitan areas falls to a **Passenger Transport Authority** (PTA). PTAs are made up of representatives of local metropolitan district councils in the areas in which they serve, and their work is carried out by **Passenger Transport Executives** (PTEs). The responsibilities of the PTEs are to:

- produce the strategies for the development of local public transport networks;
- manage and plan local rail services (in partnership with the DfT);
- plan and fund socially necessary bus routes;
- work in partnership with private operators to improve bus services - for example through bus priority schemes;
- run concessionary travel schemes - including those for older, disabled and young people;

¹³¹ excluding London

- invest in local public transport networks - including new rail and bus stations;
- develop and promote new public transport schemes - like light rail and guided bus networks;
- provide impartial and comprehensive public transport information services - including by phone and internet;
- manage and maintain bus interchanges, bus stops and shelters.¹³²

2. Changes to PTAs

In the consultation paper that accompanied the publication of the draft Bill the Government indicated particular concerns with local governance in Metropolitan areas and suggested that this could be improved to enhance the delivery of transport policy:

It has become increasingly clear that the existing legislation which governs transport in cities lacks flexibility and needs to be updated to reflect changing patterns of transport needs and use. Amongst other problems, the existing legislation:

- does not provide sufficient flexibility to allow different arrangements to be put in place in different areas in order to reflect the particular needs of each area. Nor does it allow for the establishment of new PTAs or wider transport authorities, where these are seen as desirable; and
- does not encourage decisions on roads and public transport in an area to be taken together in the interests of transport users as a whole. If a PTA, for example, wishes to improve the punctuality of a bus service by offering the bus company priority over other road users, it has to secure the agreement of the relevant district council(s) for provision of a bus lane. The district may have little interest itself in the bus lane if, for example, only a minority of the users of the bus service are its own residents. A district on the other hand which wishes to introduce measures to manage demand for road use in its area has to negotiate with the PTA if it considers that new public transport services are needed to support these measures. Again, the PTA's priorities may not match those of the district concerned.¹³³

The draft Bill proposed creating a framework for the creation of new PTAs and allowing for greater variation in governance structures and the distribution of powers between PTAs and local councils. It would do this by enabling the Secretary of State to create, by Order (subject to affirmative resolution in Parliament), a new PTA where two or more Councils submit a proposal to do so. This does not necessarily have to be within an urban conurbation. It would also enable the Secretary of State to vary, in accordance with local needs and circumstances, the structure of governance in individual existing PTAs. PTAs and their constituent Councils would need to propose such changes to the Secretary of State through a 'scheme'. The following aspects could be altered:

- the membership and structure of PTAs;

¹³² Passenger Transport Executive Group, *What are PTEs?*: <http://www.pteg.net/Aboutpteg/01-ptes.htm>

¹³³ *op cit.*, *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), para 4.12

- the division of responsibilities between the PTAs and their respective PTEs;
- the allocation of responsibilities between PTAs and individual local authorities for highways and traffic functions;
- the ability of PTAs to influence the management by individual local authorities of their local road network; and
- the boundaries of PTA areas (e.g. to cover an additional local authority area).

The draft Bill also proposed abolishing the requirement for PTAs to produce a Local Transport Plan and replacing this with a requirement to publish an Integrated Transport Strategy and an implementation plan for the Strategy. The ‘well being’ power for local authorities would also be extended to PTAs and there would be an additional duty for PTAs to have regard to Government policies on climate change.

3. Comment

Taken together, the Transport Committee was of the view that the proposals for local transport governance reform in the draft Bill were to be welcomed. It was not, however, happy that such a major structural reform – particularly as regards the PTAs – would be legislated for by Orders, subject only to the Affirmative Procedure (i.e. one and a half hours debate on the floor of the House).¹³⁴

On the PTA reforms, the Committee thought that the procedure for triggering reform should be looked at again. In particular, it was concerned about the power of the Secretary of State to ‘trigger’ a review of local transport governance arrangements in a given area and thought that this should be a reserve power only – it should be clear that the decision on whether to look at local arrangements would be a matter for locally-elected representatives to take, not central Government.¹³⁵ The Committee also thought that the requirement in the draft Bill that only a whole local authority area could become part of a PTA should be amended so that part of a local authority area could form part of a PTA. The Committee’s rationale for recommending such a change was that travel-to-work patterns do not necessarily respect administrative boundaries.¹³⁶

The Committee was however, concerned about the inconsistency in the draft Bill which, on the one hand, provided for potentially significant increases in PTA powers and indeed in the numbers of PTAs while, on the other hand, continuing to restrict their ability to raise money by precepts, borrowing or otherwise:

In many respects, the reforms to governance in the Draft Bill seek to facilitate the adoption of policy setting and delivery powers mirroring those of Transport for London. However, where increased powers for delivery are not matched with increased flexibility on funding this will limit progress. The Secretary of State noted that PTEs already have powers to borrow prudentially against revenue streams. However, the Passenger Transport Executives felt that funding arrangements had not yet been adequately discussed and that the ways in which

¹³⁴ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, para 100

¹³⁵ *ibid.*, para 102

¹³⁶ *ibid.*, para 102, see also evidence to the Committee from the County Surveyors’ Society (Ev. 137) and the Local Government Association (Ev. 262)

funding could be accessed were unclear. There is a lack of clarity over the future funding arrangements for new PTA areas and Clause 61 appears very restrictive. The options for borrowing available to PTAs need to be set out and consulted on prior to the Bill being presented to Parliament. Flexibility is required to enable transport initiatives to be funded that support the greater powers being provided.¹³⁷

While the Committee did not agree that climate change should be singled out as a national priority for special attention, it was generally supportive of the move to Integrated Transport Strategies provided that they take account of all forms of transport including, for example, freight.¹³⁸

Pteg thought that the governance proposals in the draft Bill struck “broadly the right balance” between:

...strengthening the remit and the role of the PTA in planning and delivering the strategic priorities for the city region whilst allowing each city region some freedom of manoeuvre on how best this might be achieved, in the light of local circumstance and local aspirations.¹³⁹

It was, however, strongly of the view that the Government should not seek to impose uniformity on PTA areas:

We are ... strongly of the view that "no one size fits all" and that city regions should be allowed to develop formats for governance that best suit local circumstances and local priorities. We are very pleased that the draft Local Transport Bill accepts this as a cornerstone of its approach. However, just as it would be wrong to attempt to impose a single model of governance on the city regions, it would be equally wrong not to encourage city regions to take a fresh look at what structures of transport governance would best support the equitable and sustainable economic development and regeneration of their areas. The Bill rightly gives the Government the powers to encourage and accelerate progress where a city region fails to rise to the challenge or where the progress of a city region as a whole is being slowed down by the politics of the "lowest common denominator".¹⁴⁰

The Local Government Association was broadly supportive of the measures to devolve more transport powers to PTAs, arguing that if delivered, they could result in a more cohesive approach to transport planning. The LGA had previously argued that there is a strong case for devolving transport powers to groups of authorities at the sub-regional level and that, as circumstances differ in different parts of the country, flexibility is required to allow decisions on the most appropriate governance arrangements to be made by individual areas.¹⁴¹

¹³⁷ *ibid.*, para 110

¹³⁸ *ibid.*, paras 107 and 109

¹³⁹ *ibid.*, Ev. 200

¹⁴⁰ *ibid.*, Ev. 200

¹⁴¹ *ibid.*, Ev. 262

B. The Bill

1. Government response to the consultation

The Government proposed a number of changes to the draft Bill when it published its response to the consultation. A small but symbolic change is that the Bill would rename 'Passenger Transport Authorities' (PTAs) as 'Integrated Transport Authorities' (ITAs); though the Passenger Transport Executives (PTEs) would retain their current names. In its response to the consultation the Government stated that the change is intended to better reflect the "coordinated, conurbation-wide" role of transport authorities in terms of freight as well as passenger transport.¹⁴² Other planned changes are:

- Any group of authorities would be able to carry out a governance review, without requiring a 'direction' to do so from the Secretary of State, though that power to direct would be retained and extended to allow such a direction to apply not only (as currently) to ITA areas but to elsewhere;
- ITAs would be allowed to incorporate the areas of one or more shire district councils, rather than having to incorporate whole counties as had previously been proposed. The intention is that this would enable ITAs to better fit their areas to local travel patterns;
- A requirement that a majority of members of an ITA must be elected members from the constituent local authorities;
- There will be a wider duty on transport authorities to take account of the Government's environmental policies; this replaces the requirement to take account of climate change, criticised by the Transport Committee amongst others;
- Local Transport Plans (LTPs) would be retained but with some changes: they would need to include both local transport policies and proposals to implement them; in ITA areas the ITA would produce the ITA in consultation with the constituent local authorities; and local authorities will be able to replace their LTPs whenever they deemed appropriate rather than on the current five-yearly cycle; and
- The wellbeing powers which the Bill extends to ITAs could be delegated to PTEs.¹⁴³

The Government's response explained that there were no provisions in the Bill to change the financing arrangements for local authorities and contended that this was partly because there was little desire indicated for such change in the responses to the draft Bill:

The consultation responses did not suggest any strong interest in changing the existing arrangements under which PTAs secure local contributions through a levy on their constituent authorities. Any specific implications for transport funding will need to be considered in the context of individual governance reviews.¹⁴⁴

¹⁴² op cit., *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 3.5

¹⁴³ ibid., para 3.5

¹⁴⁴ ibid., para 3.7

The Government's summary of responses to the consultation did, however, acknowledge that local authorities had said that additional revenue-raising powers were desirable for improving infrastructure, implementing demand-management solutions and providing the running costs of new capital transport programmes, if they were not to be dependent on Council Tax revenues.¹⁴⁵ More specifically, in its evidence to the Transport Committee, the Local Government Association (LGA) stated:

... the Bill will need to go further than it currently does in devolving powers across all modes of transport and greater control over funding and revenue raising. Crucially, it also needs to be part of a wider devolution of economic powers.

Our ambition is for a local transport bill that gives local authority partnerships control over decision making and funding for transport as a part of a wider programme of devolution, encompassing other aspects of the sub-regional economy, including labour markets, economic development and spatial and economic planning. This would enable groups of councils and their partners to use these powers in a cross-cutting way to deliver locally distinctive solutions to local and national challenges.

(...) the Bill needs to give local authorities the legal powers and financial levers they need to put in place investment of the scale required to deliver significant transport improvements. This includes revenue-raising powers to deliver improvements to public transport infrastructure in advance of a road pricing scheme.¹⁴⁶

In December 2007 the Government published draft Guidance on governance reviews and the publication of governance schemes setting out the process of a review, and implementation. This draft Guidance was issued in order to assist Parliament during consideration of the Bill; it would require revision before being issued in its final format, to reflect any changes made in Parliament and following any comment received.¹⁴⁷

2. Debate in the House of Lords

There was some debate at Second Reading in the Lords on the general principles behind the local transport governance proposals in the Bill.¹⁴⁸ In Committee there were several changes proposed to the measures on **Local Transport Plans** (LTPs). Lord Hanningfield (Conservative) proposed that the duty for LTPs to take account of the Government's guidance on environmental matters be removed from the Bill; and that local authorities should also take account of rail representatives and local groups, particularly children's representatives, when developing their LTP.¹⁴⁹ Lord Berkeley (Labour) proposed a similar amendment, that authorities should take account of Network

¹⁴⁵ DfT, *The Local Transport Bill: summary of points raised during the consultation* (Vol. 2), 7 November 2007, para 3.153: http://www.dft.gov.uk/162259/165237/299192/vol2_summaries.pdf

¹⁴⁶ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, Ev. 262

¹⁴⁷ DfT, *The Local Transport Bill: Outline Guidance on Governance Reviews and the Publication of Governance Schemes*, 6 December 2007: <http://www.dft.gov.uk/pgr/regional/localtransportbill/governance.pdf>

¹⁴⁸ HL Deb 20 November 2007; e.g. Lord Hanningfield, c794GC

¹⁴⁹ HL Deb 6 December 2007, cc48-49GC and cc50-51GC

Rail when developing their LTPs.¹⁵⁰ Baroness Crawley, responding for the Government, stated that it was more appropriate for authorities themselves to decide whom to consult, taking account of local circumstances.¹⁵¹

Lord Hanningfield also proposed that the measures in the Bill to remove the renewal limits on LTPs should be clarified so that authorities would be required to revise their LTP when there was a major transport need change in their area, and that any plan should have a specified length of operation for performance and reporting purposes.¹⁵² He also asked how such open-ended plans as were being proposed in the Bill would fit in with Local Area Agreements (LAAs). Lord Bassam of Brighton, responding for the Government, promised to write to clarify the matter.¹⁵³ Lord Hanningfield also proposed that if an authority wished to introduce a Quality Partnership that it should first put a **'bus partnership' plan in its LTP**. Lord Bassam was of the view that this would create an unnecessary precedent, requiring an LTP to 'have regard' to one scheme or another.¹⁵⁴ Lord Hanningfield returned to the matter at Report stage and pressed it to a vote, it was defeated 171-100.¹⁵⁵

At Report stage Lord Bassam proposed a new amendment to introduce a duty on LTPs to have regard to the **needs of disabled people**. This was added to the Bill.¹⁵⁶ Also on Report Lord Bassam proposed a Government amendment to allow the Secretary of State to **delegate district council functions to an ITA** in order to bring it into line with other councils whose powers can already be delegated. This was added to the Bill.¹⁵⁷

There were several other proposals for changes to the provisions about PTA/ITAs:

- Lord Rosser (Labour) proposed that the PTEs' transport grant-making power be extended to allow them to deliver a broader public transport service. Baroness Crawley resisted the amendment on the ground that it might be incompatible with the EC state aid rules;¹⁵⁸
- Lord Hanningfield proposed that the definition of what ITAs should achieve should be expanded to include 'integration' and 'sustainability'; Baroness Crawley stated that she would take a further look at the matter before Report stage;¹⁵⁹
- Lord Rosser proposed that only two or more authorities should be able to initiate an ITA review;¹⁶⁰

¹⁵⁰ *ibid.*, cc49-50GC

¹⁵¹ *ibid.*, c52GC; at Report stage Lord Hanningfield made a similar amendment which was again resisted by the Government and withdrawn, see HL Deb 16 January 2008, cc1302-1305

¹⁵² *ibid.*, c55GC

¹⁵³ *ibid.*, c58GC

¹⁵⁴ *ibid.*, cc58-59GC

¹⁵⁵ HL Deb 16 January 2008, cc1305-1307

¹⁵⁶ *ibid.*, cc1309-1311

¹⁵⁷ *ibid.*, c1386

¹⁵⁸ HL Deb 17 December 2007, cc210-211GC; at Report stage Lord Rosser proposed and withdrew extending grant-making powers to cover the elderly, the unemployed and those in full time education, see: HL Deb 16 January 2008, cc1353-1355

¹⁵⁹ *ibid.*, cc221-223GC

¹⁶⁰ *ibid.*, cc225-226GC; Lord Rosser proposed and withdrew a similar amendment at report stage, see: HL Deb 16 January 2008, cc1382-1383

- Lord Hanningfield proposed that the Secretary of State should be able to make changes to ITAs only with the express consent of the local authorities involved; Lord Bassam argued that this would constitute an effective ‘veto’;¹⁶¹ and
- Lord Rosser proposed that only the elected members of an ITA should be able to decide on the appointment of unelected members of the ITA; Lord Bassam stated that he would set out the governance arrangements in more detail in a letter before Report;¹⁶²

3. Relevant clauses

The provisions regarding local authority governance are dealt with in Part 2 and Part 5 of the Bill:

- **clauses 7-12** deal with changes to **transport policies** and **Local Transport Plans**;
- **clauses 72-91** deal with **Integrated Transport Authorities**; and
- **clauses 92-95** contain the provisions related to **well-being powers**.

V Local road pricing

A. Background and proposals in the draft Bill

1. A national scheme?

The Bill proposes changes to the legislation in the *Transport Act 2000* to allow local authorities to implement local road charging schemes. For that reason, this Research Paper does not address the broader question of national road pricing. In theory, if the Government chooses to go ahead with the much-discussed proposals for a national road pricing scheme it will require a separate piece of primary legislation to do so. The former Secretary of State made the point in his foreword to the consultation paper on the draft Bill:

In some areas, local road pricing schemes may have a role to play – but this is a decision for local authorities to make themselves. This is why we are proposing a series of reforms to the existing legislation to ensure that those local authorities who wish to develop local schemes have the freedom and flexibility to do so in a way that best meets local needs.

Consistent with our longer-term strategy on road pricing, the draft Bill would not provide the legal powers that would be needed for a national system of road pricing. We have made clear that decisions on that can be taken only in the light of further practical experience of local schemes. Further, separate, legislation

¹⁶¹ *ibid.*, cc226-228GC

¹⁶² *ibid.*, cc230-233GC; Lord Rosser proposed and withdrew a similar amendment on Report which would give elected members of an ITA a veto over non-elected members, see: HL Deb 16 January 2008, cc1384-1386

would be needed if in future a decision was taken to move towards a national scheme – and there would need to be a full and informed public debate.¹⁶³

That said, taken together, the changes in this Bill will make any local schemes that are established under this legislation and the 2000 Act interoperable and consistent.¹⁶⁴ When the Transport Committee was considering its report on the draft Bill Mr Hollobone, a Conservative Member of the Committee, put down amendments to the report arguing that the proposals in the draft Bill open up the possibility that local schemes in every major metropolitan area, accompanied by toll roads, could become a *de facto* national scheme without the need for further legislation. Of course, this would mean that the proceeds from any charging schemes would continue to go to local transport authorities rather than central Government. The Government would need to consider whether that was a price worth paying for the perceived benefit of not having to introduce controversial legislation for a national road pricing scheme. He proposed two additional paragraphs to that effect to be included in the report. Both were voted down by the Committee.¹⁶⁵

2. Local charging schemes

The legislative framework for local road charging schemes outside London is set out in Part III and Schedule 12 of the *Transport Act 2000*.

The Government first announced in the 1998 transport White Paper, *A new deal for transport*, that it would consider introducing legislation to allow local authorities to charge road users.¹⁶⁶ The Government issued a consultation paper, *Breaking the Logjam*, on congestion charging and workplace parking in December 1998.¹⁶⁷ Charges could be introduced to reduce congestion, to prevent traffic growth, or to assist in other aims as part of a Local Transport Plan. The paper outlined the primary legislation necessary to enable traffic authorities to introduce charging in their area, although it considered that much of the detail (such as possible limits to the size of the charges imposed, exemptions from charges and preferential rates, penalties for non-compliance and procedures for appeals) would be best provided in secondary legislation, statutory guidance or dealt with in the approval of individual schemes. It was not compulsory to introduce schemes but would be up to local councils.

About the same time as the consultation paper *Breaking the Logjam* was published, the *Greater London Authority Bill* was published. It provided for the introduction of road user

¹⁶³ op cit., *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), pp5-6

¹⁶⁴ the European Interoperability Directive is also relevant here, Directive 2004/52/EC entered in force on 20 May 2004 and the UK *Road Tolling (Interoperability of Electronic Road User Charging and Road Tolling Systems) Regulations 2007* were laid on 17 January 2007 and came into force on 12 February (SI 2007/58: http://www.uk-legislation.hmso.gov.uk/si/si2007/uksi_20070058_en.pdf); the 2004 Directive also establishes the European Electronic Tolling Service (EETS) in complement to national tolling authorities; further legislation will be required to implement EETS once it has been defined

¹⁶⁵ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, formal minutes, pp119-120

¹⁶⁶ DETR, *A new deal for transport: better for everyone*, Cm 3950, July 1998, paras 4.92-4.99: <http://www.dft.gov.uk/about/strategy/whitepapers/previous/anewdealfortransportbetterfo5695>

¹⁶⁷ DETR, *Breaking the logjam; the government's consultation paper on fighting traffic congestion and pollution through road user and workplace parking charges*, December 1998: <http://www.dft.gov.uk/consultations/archive/1999/logjam/>

charging schemes in London. Later, the *Transport Act 2000* introduced powers to charge road users in towns in the rest of England and Wales. The charging provisions in the *Greater London Authority Act 1999* and the powers in the *Transport Act 2000* are broadly similar. They differ only in that the decision to introduce congestion charging in London is entirely for the Mayor.¹⁶⁸ Outside London, only one authority—Durham—has introduced a small congestion charging scheme.¹⁶⁹ In its *Ten Year Plan for Transport*, the Government predicted that, outside London, there would be eight local charging schemes in place by 2010.¹⁷⁰

The draft Bill proposed that PTAs should be able to enter into joint charging schemes with local (or London traffic) authorities in order to facilitate the achievement of local transport policies. However, PTAs would still not be able to introduce charging schemes without the co-operation of the relevant local authorities. It also proposed that charging authorities should have regard for the impact of any scheme on climate change and atmospheric pollution; that schemes should be consistent and interoperable; and consequent regulations could be made to cover method of payment and use of equipment, including data formats, encryption and security. The Secretary of State would also have the power to notify the Greater London Authority (GLA) that the use of equipment in relation to the London Congestion Charge was incompatible with the national regulations, and therefore detrimental to people in England outside London. On the basis of this, the Secretary of State would be able to require that the equipment may no longer be used in connection with a charging scheme.

Perhaps most importantly, under the proposals in the draft Bill the Secretary of State would no longer be involved in approving local charging schemes in England, and (s)he would no longer have the power to hold an inquiry into a local scheme, or require a local authority to conduct a consultation. The Department's argument for this change is as follows:

Removing Ministers from the decision-making process would make clear that local areas are themselves responsible for decisions on local schemes. It would also allow central government to support the development of local schemes, without running the risk of prejudging a quasi-judicial decision that, under current legislation, must be made by the Secretary of State. Similarly, we propose to remove the power for the Secretary of State to instigate an inquiry into a local charging scheme, leaving it for the local authority to make that decision in light of local circumstances.¹⁷¹

3. Transport Innovation Fund

The Department for Transport has more recently tried to encourage local authorities to develop local road pricing schemes through the establishment of the Transport Innovation Fund (TIF). On 5 July 2005 the then Secretary of State announced that TIF

¹⁶⁸ the Mayor introduced congestion charging in London in February 2003

¹⁶⁹ <http://www.durham.gov.uk/durhamcc/usp.nsf/pws/Roads+-+Road+User+Charge+Saddler+Street+Market+Place+Durham>

¹⁷⁰ DETR, *Transport 2010: The Ten Year Plan*, July 2000, para 6.48: <http://www.dft.gov.uk/162259/165259/tenyearplan>

¹⁷¹ *op cit.*, *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), para 5.17

funding would come 'on stream' from 2008-09, reaching £2.5 billion by 2014-15.¹⁷² The total amount allocated to Congestion TIF is £1.4 billion, with a distribution rate of around £200 million per year from 2008.¹⁷³

The departmental press notice which reported the Secretary of State's statement of 5 July placed the TIF firmly in the context of the Government's broader strategy on road pricing:

The Fund will also be used to support innovative local plans which help tackle congestion. We are looking for proposals which combine some form of demand management such as road pricing, with better public transport, including better use of buses, tram or light rail schemes, provided they offer good value for money. These pilot schemes will feed into our wider work on national road pricing.¹⁷⁴

In his statement the then Secretary of State said:

The transport innovation fund will be used to support the delivery of infrastructure schemes that will promote our national productivity. Transport that is well planned and sensitive to our environmental and social objectives is fundamental to our sustained prosperity, through road improvement as well as rail and light rail schemes, for example. The fund will also be used to support local plans that will help to tackle congestion. We are looking for proposals that combine some form of demand management, such as road pricing, with better public transport. These pilot schemes will contribute to our work on national road pricing ...

Ahead of any future national scheme, parts of the country already experiencing congestion may wish to develop road pricing schemes to improve travel within their area. If road pricing is to be developed, we need to pilot a scheme covering one or more local authority areas or, for example, a passenger transport executive, in which congestion is already a problem and the local authorities want to do something about it. We want to work with local authorities to develop and implement a pilot scheme for road pricing. No decisions have been taken on where such a pilot might take place, but we hope to identify partner authorities willing to work up pilot proposals within the next year. We hope that they will then start work on the ground with support from the transport innovation fund when it comes on stream.¹⁷⁵

In the first two rounds of pump priming, in November 2005 and May 2006, funds were awarded to: Bristol City Council, Bath and North East Somerset Council, North Somerset Council, South Gloucestershire Council; Cambridgeshire; Durham County Council (for Durham City); Greater Manchester; Shropshire County Council (for Shrewsbury); Tyne and Wear; the West Midlands conurbation; Reading; Norfolk (for Norwich); and Nottingham, Derby and Leicester and the surrounding counties.

¹⁷² HC Deb 5 July 2005, cc171-172

¹⁷³ TIF essentially split into two streams: Congestion TIF accounts for the lion's share of the fund and is dedicated to funding projects which will tackle congestion; the other strand is Productivity TIF which is largely focused on freight-based initiatives

¹⁷⁴ DfT press notice, "Congestion busting fund", 5 July 2005

¹⁷⁵ HC Deb 5 July 2005, cc171-172

The Government released further guidance for those authorities aspiring to secure full congestion TIF partnership status on 30 November 2006. TIF Partnership is an optional stage of the overall TIF process, designed to enable closer working between the Department for Transport and local authorities developing demand management proposals for an application to the congestion element of the Transport Innovation Fund. On 8 February 2007, the Government released guidance for those authorities considering submitting a bid for a substantive congestion TIF scheme, outlining the key requirements for TIF bidders.¹⁷⁶

In July and August 2007 it was reported that Greater Manchester had made a TIF bid for a road charging scheme,¹⁷⁷ as had Cambridge,¹⁷⁸ while the TIF bid from the West Midlands was submitted without any road charging element. The West Midlands authorities ultimately decided not to include a congestion charging element with their TIF bid after councillors from the seven relevant authorities failed to reach agreement.¹⁷⁹

Although TIF is not part of the Bill it clearly has a bearing on any future local road charging schemes. Consequently, the Transport Committee examined the TIF as part of its report on the draft Bill. While the Committee welcomed the extra money that TIF will provide it was concerned that the Fund was, in effect, restricting availability to schemes that proposed some form of local road charging and recommended that this requirement be dropped.¹⁸⁰

4. Comment

In successive reports the Transport Committee has indicated that it is generally in favour of road pricing; it recommended a staged approach to adopting a national scheme in its 2005 report.¹⁸¹ The Committee thought that the proposals for local schemes in the draft Bill broadly made sense and was generally supportive; however it did ask for clarification on some of the points. In particular, the changes to frameworks for local schemes established in the Bill (in terms of consistency, interoperability, fairness and flexibility), will be mostly contained in consequential statutory instruments. The Committee was of the view that drafts of these instruments should be made available for consideration by Parliament by the time the Bill reaches Committee stage in the House of Commons.¹⁸² In a similar vein, if the Bill is passed the Government will produce statutory guidance on data protection and privacy. The Committee was keen that this should be suitably “tough

¹⁷⁶ DfT, *Executive Summary - TIF Business Case Guidance*, 8 February 2007

<http://www.dft.gov.uk/pgr/regional/tif/execsummtifguideprogrammeentry>

¹⁷⁷ Manchester’s TIF submission was summarised in a July 2007 press notice: AGMA press notice, “The future of transport in Greater Manchester”, 27 July 2007:

http://www.gmfuturetransport.co.uk/downloads/AGMA_TIF_Bid_Release_270707.zip

¹⁷⁸ information on the council’s plans at:

<http://www.cambridgeshire.gov.uk/transport/strategies/tacklingcongestion/whathappensnext.htm>

¹⁷⁹ “Gridlock over congestion charge”, *Birmingham Post*, 24 July 2007

¹⁸⁰ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, para 173

¹⁸¹ Transport Committee, *Road Pricing: The Next Steps* (seventh report of session 2004-05), HC 21, 16 March 2005

¹⁸² op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, para 130

enough to address public concerns” and that more information should be given on the face of the Bill as to what exactly would be required.¹⁸³

The Committee was more sceptical about the proposal in clause 73 of the draft Bill to remove the Secretary of State's power to hold an inquiry into a local charging scheme or require the authority to consult. While it welcomed the general thrust of the changes in the draft Bill towards giving local authorities more independence, this, the Committee felt, was a misjudgement:

...much of the evidence we received on clause 73 argued that the consultation requirement should be strengthened, with a statutory duty to consult on all charging schemes, rather than only in cases specified by the Secretary of State. This view was shared by witnesses who were in favour of road pricing in principle as well as those who were against it. Several witnesses argued that there the duty should include reference to specific groups, such as local businesses, public transport providers, and disabled people. Given that the Department itself concedes that it is "inconceivable" that an authority would choose not to consult before implementing a scheme, it is difficult to see why Ministers want the consultation requirement removed. The Chairman of the RAC Foundation told us he was "puzzled why the Secretary of State [was] minded to remove this requirement".

Proper consultation should not be seen as an obstacle to introducing local charging schemes; it is an essential part of their proper introduction and a means of ensuring that they are well designed, that they meet local needs and that road users understand why they are being introduced and what the expected benefits are. We recommend that Clause 73 be omitted from the Bill.¹⁸⁴

The local authorities and the PTAs were broadly in agreement that the local road charging measures in the Bill were acceptable provided that the thrust of the development of such schemes continues to be local decisions for local areas based on locally-determined circumstances.¹⁸⁵

The Committee also received evidence from motoring organisations and anti-road pricing groups who were, unsurprisingly, more sceptical about the measures in the draft Bill. For example, the National Alliance Against Tolls characterised the content of the draft Bill as:

... there are to be no more referenda, the requirement to go through even a mock form of consultation is removed, and power is to be given to the least democratic of all the local authority bodies—Passenger Transport Authorities.¹⁸⁶

The RAC Foundation for Motoring was particularly concerned with the provision to do away with the need for consultation:

¹⁸³ *ibid.*, para 140

¹⁸⁴ *ibid.*, paras 131-132

¹⁸⁵ *ibid.*, Ev. 200, and Ev. 262

¹⁸⁶ *ibid.*, Ev. 165

It is clear from research we have commissioned as well as from other sources such as the No 10 e-petition that there is widespread opposition to road pricing. In the light of this we are concerned at the proposal in the Draft Bill that the requirement in the Transport Act 2000 that promoters of schemes consult all interested parties is to be dropped. We recognise that the associated guidance recommends consultation but remain concerned that the importance of comprehensive consultation is in effect downgraded by the change. We would press that the statutory requirement to consult should be retained.¹⁸⁷

The Association of British Drivers picked up on the same point:

The main change is that there is to be less democratic control over charging. The Minister is giving up the power to require that there is public consultation, and charging authorities will no longer need approval of the Minister before introducing a charging scheme. The bill seems to make it even easier for local authorities to implement anti-car measures. There is no requirement for a referendum on road pricing/congestion charging. People must be given the chance to vote on congestion charging/road pricing. The main thrust seems to be to try and force people to use the bus regardless of whether or not it is appropriate or practical.¹⁸⁸

B. The Bill

1. Government response to the consultation

The Government's response to the consultation indicated only minor changes to the local road pricing provisions of the Bill, with the exception of one, significant, new addition which would allow, at its request, the Welsh Assembly Government to implement trunk road charging in Wales. The minor changes proposed are that the DVLA would be able to request foreign vehicle keeper information from the relevant agency and release that information to local authorities for the purposes of enforcing any local charging scheme; and authorities may temporarily suspend a local scheme.¹⁸⁹ It also proposed further changes to the provisions for road charging schemes in London:

- All net revenues from charging schemes in London would have to be spent on local transport, reflecting the proposal in the Bill for the rest of the country;
- More than one charging authority would be permitted to implement a road pricing scheme in London, with the GLA's consent;
- The Secretary of State would share in scheme revenues where a local scheme in London included sections of the trunk road network, as is the case in the rest of the country; and
- The proposal in the draft Bill to drop the requirement for Transport for London and other London authorities to make plans and programmes for spending revenues from their local charging schemes will be retained.¹⁹⁰

¹⁸⁷ *ibid.*, Ev. 153

¹⁸⁸ *ibid.*, Ev. 107

¹⁸⁹ *op cit.*, *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 4.6

¹⁹⁰ *ibid.*, para 4.6

The Government made no changes to the much-criticised removal of Secretary of State approval for a local road charging scheme (clause 73 of the draft Bill) and the removal of that power remains in the Bill. The power to abolish the requirement on local authorities to consult before implementing a charging scheme also remains, though the Government has indicated that it still expects local authorities to “consult fully”.¹⁹¹ This does raise the question of whether a local authority must consult on a charging scheme once the Bill removes the requirement to do so. There are provisions about consultation in other pieces of local government legislation, such as the requirements for best value authorities to involve local representatives when they exercise their functions.¹⁹² An emphasis on local consultation was also highlighted in the October 2006 local government White Paper.¹⁹³

As stated above, the Bill proposes changes to the power of the Welsh Assembly Government to implement trunk road charging in Wales.¹⁹⁴ This proposal was not contained in the draft Bill that went out to consultation in May 2007 and could not, therefore, be considered by the Transport Select Committee when it performed pre-legislative scrutiny of the draft Bill in summer 2007.

The Assembly has had the power to make charging schemes since 2001 under Part III of the *Transport Act 2000*. Schedule 12, part 13 of the 2000 Act states that in the case of trunk road schemes in Wales (and England), “the relevant authority’s share of the net proceeds is available only for application for the purpose of directly or indirectly facilitating the achievement of any policies or proposals relating to transport”. Clauses 115 and 116 of the Bill would change the powers in the 2000 Act, reducing the burden on the Assembly as to when and how it may adopt a trunk road charging scheme. The Government makes clear in its response to the consultation on the draft Bill that no equivalent change to the road pricing powers in England is being proposed. Trunk road charging in England would still be restricted to roads that are carried by bridges, or that pass through a tunnel of at least 600 metres in length; unless such a charge is requested by a local authority in connection with a local road charging scheme being proposed or made by them.¹⁹⁵ The Bill disapplies these limitations in Wales.

The Government indicated in its response to the consultation that the new power has been included in the Bill at the instigation of the Welsh Assembly.¹⁹⁶ In a Memorandum, published with the Bill in November 2007, the Assembly explained why it was requesting the new power in the context of its legislative competence. It did not offer a view to the

¹⁹¹ *ibid.*, para 4.9

¹⁹² *Local Government and Public Involvement in Health Act 2007*, section 138

¹⁹³ DCLG, *Strong and Prosperous Communities* (Cm 6939), October 2006, paras 2.19-2.20: <http://www.communities.gov.uk/publications/localgovernment/strongprosperous>

¹⁹⁴ devolved on the Assembly under the *Government of Wales Act 2006*; for a list of powers that have been devolved to date, see: http://www.assemblywales.org/schedule_5_consolidated_list.pdf; you can also view provisions in more detail via the Tracking Notes: http://www.assemblywales.org/bus-home/legislation_fields.htm

¹⁹⁵ *Transport Act 2000*, section 167

¹⁹⁶ *op cit.*, *The Local Transport Bill: the Government’s response to the consultation* (Vol. 1), p25

effect that it was seeking the additional powers with the intention of implementing trunk road charges in Wales.¹⁹⁷

2. Debate in the House of Lords

There was considerable debate at Second Reading in the Lords about the local road charging provisions in the Bill. The new measures for trunk road charging in Wales raised particular concerns.¹⁹⁸ The Lords returned to these issues in more detail at Committee stage where there was a long debate at stand part on both the **removal of the requirement that the Secretary of State approve local charging schemes**, and that **local authorities be required to consult on any proposed road charging scheme**. For example, Lord Cameron of Dillington (Cross-bencher) said:

I query the effects of Clauses 97 and 98 as they stand in the Bill. Clause 97 abolishes the need for confirmation of English charging schemes by the Secretary of State. While the reasoning behind removing the Secretary of State's responsibility for approving each road pricing scheme is understood, and I have no wish to return to the Transport Act 2000 situation, there should be some form of central government control in ensuring that these schemes are fully harmonised in their objectives and fully interoperable.

Clearly, legislative and statutory guidance from the Government can help to achieve that objective and Clause 100 seems to take a first step towards that, but, in my view, central government should clearly demonstrate what mechanism will be in place to ensure that a local authority, implementing a scheme which fails to meet the statutory guidance, will be brought to account. Currently, that remains unclear and I suggest creates a degree of uncertainty.

The House of Commons Transport Committee echoed those views. I quote from its report:

“Regulations and guidance governing local charging schemes must balance the need for consistency, interoperability and fairness against the need to provide flexibility to tailor schemes to local requirements. The strengths and weaknesses of this framework will play a key part in determining whether or not the local schemes are successful. We believe that Parliament should have a clear indication of the framework the Government intends to put in place”.

If consistency and interaction between schemes is not achieved, it will become extremely complex and confusing for all motorists (...)

Clause 98 abolishes the power of the Secretary of State to insist on a public inquiry or consultation as regards road charging schemes in England. While I have no wish to force a public inquiry on anyone, I think that proper consultation is essential. I realise that the local authority may still consult and may hold its own

¹⁹⁷ DfT, *Welsh Assembly Government memorandum on the framework provisions for the National Assembly of Wales*, November 2007:

http://www.dft.gov.uk/162259/165237/299192/Wales_Framework_Powers_Memo1.pdf

¹⁹⁸ HL Deb 20 November 2007; e.g. Earl Attlee (generally), cc749-750GC; Lord Roberts of Conwy (Wales), cc773-774GC; Lord Glentoran (Wales), cc787-788GC

inquiry, but I do not think that is good enough when one considers the effects that these schemes could have on those who might visit the urban centre in question(...)

Proper consultation is vital in terms of achieving the objective of harmonised road pricing schemes, and as I say, those who will be impacted by road pricing schemes inside and outside the area where the scheme is to be introduced should be able to put forward their views on a local charging scheme.¹⁹⁹

There was also a substantial debate at stand part on the **new powers for the National Assembly for Wales to make a trunk road charging scheme**. Lord Glentoran (Conservative) argued:

Clause 109 should not be in the Bill because it is a tax-raising Bill, and noble Lords will know that we do not debate tax-raising Bills in your Lordships' House. Clause 109 creates a power for the National Assembly for Wales to gain legislative competence over schemes for charging for the use of trunk roads in Wales and the application of the proceeds of those charges to transport purposes(...)

We believe that the provision would allow Wales to become a stalking horse for a UK-wide scheme. We are also concerned that the power effectively licenses the Assembly to levy taxation within Wales. This would be a profound constitutional move as the Assembly, unlike the Scottish Parliament, has no power of taxation. As the only real means of revenue raising, this could mean that road pricing would provide a cash cow for the Assembly. We do not want that, do we?

The money is only hypothecated to transport, not, as Peter Hain appeared to suggest in the other place, for the maintenance of roads or the funding of new relief roads. In extremis, and this may be dreamlike, it could be used to fund the Welsh Ministers' drivers. Moreover, this limited degree of hypothecation will allow the Assembly to slash what it currently provides from the block grant for transport purposes and use that money elsewhere. Effectively, therefore, the hypothecation would not stop the Clause 109 powers being used as a form of general revenue raising. I repeat, we see this clause as a tax-raising power and believe that it should not be here.²⁰⁰

Baroness Morgan of Drefelin, for the Government, did not agree with that assessment:

Welsh Ministers have yet to decide what role, if any, road charging may play in addressing current and future transport challenges. They do, however, wish to have the powers available that would allow the Assembly to adopt a coherent approach towards any road-pricing proposals, or indeed any future UK scheme, that local authorities in Wales may bring forward at any time in the future. These powers are entirely consistent with the further development of a devolution settlement in line with the Government of Wales Act 2006. Clause 109 simply devolves the issue to Wales. The issue has already been devolved in Scotland and Northern Ireland.

¹⁹⁹ HL Deb 17 December 2007, cc235-236GC

²⁰⁰ *ibid.*, cc249-250GC

The Bill does not provide powers to implement a road-pricing scheme on all roads in Wales. That very important point should offer the noble Lord, Lord Glentoran, some reassurance. We are not talking about powers to implement a road-pricing scheme on all roads in Wales. New primary legislation would be required to impose pricing on local authority roads, which make up 95 per cent of the road network in Wales (...)

These powers are not tax-raising powers, and I do not accept that this provision will confer tax-raising powers on the National Assembly. The noble Lord, Lord Glentoran, asked about the possible application of scheme proceeds for such purposes as ministerial cars. This little nugget has come up a few times, so I thought it would be worth addressing it. As I have said, the Welsh Assembly Government do intend scheme proceeds to be applied in the implementation of strategic transport policy, transport services and the transport-related infrastructure. My right honourable friend Peter Hain referred to that point. All proposals for the application of scheme revenues will be subject to the full scrutiny of the National Assembly and the Auditor-General for Wales.²⁰¹

Lord Glentoran returned to the issue at Report when he proposed a group of amendments to make it explicit on the face of the Bill that monies raised from any trunk road charges would be put back into the trunk road network. He argued that the charges were in fact a tax and that it was agreed that the Welsh Assembly would not have tax-raising powers. Baroness Morgan of Drefelin, responding for the Government, stated that **road charges are not a tax**; she offered the following explanation:

I have been given a very clear note from the Box which answers the question whether this provision is about imposing a tax. It states clearly that the application of proceeds does not affect whether something is a tax or a charge. That depends on the link between the payment and the service received by the payer. Whether or not a charge or a tax is hypothecated—that is, whether it is limited to a particular purpose by the receiving authority—is not the issue; it is a question of whether a service is received by the payer. I hope that that addresses the question of whether we are talking about a tax here.²⁰²

Other amendments proposed to the local road charging provisions in Committee were:

- Lord Hanningfield (Conservative) proposed that the Secretary of State should be allowed to set charges nationally by vehicle type and weight;²⁰³
- Lord Low of Dalston (Cross-bencher) proposed a broader power for the Secretary of State to specify exemptions to all charging schemes;²⁰⁴
- Lord Cameron of Dillington proposed to include a liability defence for vehicle keepers when a charge is made against them that they were not the owner at the

²⁰¹ *ibid.*, cc251-253GC

²⁰² HL Deb 16 January 2008, cc1394-1400; Lord Glentoran proposed and withdrew a further amendment at Third Reading to remove the whole clause, see: HL Deb 30 January 2008, cc630-634

²⁰³ HL Deb 17 December 2007, cc243-244GC

²⁰⁴ *ibid.*, cc254-257GC; on Report Lord Low proposed and withdrew a more tightly-drawn exemption for disabled persons, see: HL Deb 16 January 2008, cc1403-1407

time; Lord Bassam of Brighton, for the Government, responded that this matter would be covered in Regulations;²⁰⁵

- Earl Attlee (Conservative) proposed that the power of the Secretary of State to share foreign driver and vehicle data with third parties be removed;²⁰⁶ and
- Earl Attlee proposed to exclude recovery, private heavy goods and ‘special’ vehicles from London Low Emissions Zone²⁰⁷ charges.²⁰⁸

At Report stage Lord Hanningfield proposed an amendment which would ensure that any variation in local road charges based on the **method of payment** were ‘reasonable’. He explained that the intention was to “protect those road users unable to possess a bank account and allow their charge to be taken by direct debit”. Lord Bassam resisted the amendment on the grounds the local authorities should be able to “provide incentives to encourage the use of efficient payment methods”.²⁰⁹ Lord Hanningfield also proposed an amendment to ensure that any monies raised from local road charges would not mean that the **relevant authority’s grant** from the Department for Transport was correspondingly reduced. Lord Bassam stated that there was no relation between the two.²¹⁰

3. Relevant clauses

The provisions concerning road charges are contained in Parts 6 and 7 of the Bill:

- **clauses 96-102** contain the provisions about **ITA involvement** in road charging schemes, including joint charging;
- **clause 103** contains the provision to **abolish the requirement for the Secretary of State to confirm road charging schemes** in England;
- **clause 104** contains the provision to **abolish the requirement that local authorities consult on any road charging scheme**;
- **clause 113** makes changes to the **London scheme**; and
- **clause 115** contains the amended powers for a **trunk road charging scheme in Wales**.

²⁰⁵ *ibid.*, c245GC

²⁰⁶ *ibid.*, cc357-259GC; on Report Lord Glentoran moved and withdrew an amendment which would have restricted the reasons why information could be shared and allowed local authorities to impose a charge on providing information, such as the Government already does, see: HL Deb 16 January 2008, cc1400-1403

²⁰⁷ <http://www.tfl.gov.uk/roadusers/lez/2021.aspx>

²⁰⁸ HL Deb 17 December 2007, cc246-249GC; he returned to the issue at Report stage but his amendment was again unsuccessful, see: HL Deb 16 January 2008, cc1389-1392

²⁰⁹ HL Deb 16 January 2008, cc1387-1389; Lord Hanningfield proposed and withdrew a similar amendment at Third Reading, see: HL Deb 30 January 2008, cc636-640

²¹⁰ *ibid.*, cc1392-1393

VI Other issues

A. Community transport

Small bus or minibus permits are issued under section 19 of the *Transport Act 1985*. They allow certain organisations to charge passengers without having to comply with the full passenger carrying vehicle (PCV) operator licensing requirements and without the need for their drivers to have a PCV entitlement. The permits are used by volunteer groups concerned with education, religion, social welfare, recreations and other activities that are beneficial to the community. The service provided must be for their own members or for groups of people whom the organisation serves. The service must not be provided to members of the general public and the charges made must be on a non-profit basis.

The draft Bill proposed transferring the responsibility for issuing small bus permits from a range of "designated bodies", which include local authorities and various national charities and church organisations, to the traffic commissioners. The Community Transport Association (CTA) objected to this move, arguing that the present system had not been shown to have any significant difficulties or failings.²¹¹ The Transport Committee agreed and recommended that the proposals be dropped from the Bill.²¹²

The draft Bill also proposed removing the current restriction which prevents the use of vehicles with fewer than nine seats for community transport services, but only where passengers pay separate fares rather than a group rate. The CTA welcomed the removal of the restriction, but argued that the 'separate fares' requirement should be dropped because minibus services, which the smaller vehicles will mostly replace, are generally charged at a group rate.²¹³ Again, the Committee agreed with the CTA and recommended that the 'separate fares' requirement be removed.²¹⁴

Following consultation, the Government proposed that the existing provisions that allow section 19 permits to be issued by 'designated bodies' should be retained and not centralised to the traffic commissioners; and the permit system should be strengthened by time-limiting community transport permits and requiring designated bodies and traffic commissioners to keep appropriate records.²¹⁵

At Lords Report stage Lord Rosser proposed extending PTE powers to allow them to provide vehicles to community transport operators. Lord Bassam of Brighton, responding for the Government, stated that he was not sure that the amendment as proposed would achieve what Lord Rosser intended but he did undertake to go away and look at the

²¹¹ *ibid.*, Ev. 222

²¹² *ibid.*, para 90

²¹³ *ibid.*, Ev. 222

²¹⁴ *ibid.*, para 92

²¹⁵ *op cit.*, *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 2.24

amendment.²¹⁶ At Third Reading Lord Bassam put down a Government amendment to that effect. It was added to the Bill.²¹⁷

Clauses 52-56 of the Bill contain the relevant provisions affecting community transport.

B. Taxi-buses

At present, taxi owners are eligible to apply for a "special restricted" PSV operator's licence, specifically to enable them to register and operate local bus services ("taxi-buses"). As a measure to assist community-based transport, the draft Bill included a provision to extend similar eligibility to holders of a private hire vehicle (PHV) licence in England and Wales.²¹⁸ The Transport Committee welcomed the change but thought that the change in the status of these vehicles to bus services should incur a responsibility on drivers to be trained to the same level of safety standards as regular bus drivers.²¹⁹

The Government's response to the consultation on the draft Bill indicated that the proposals on taxi-buses would be extended to Scotland but would not apply in Greater London unless specifically introduced by Transport for London.²²⁰

At Third Reading in the House of Lords the Cross-bencher Baroness Chapman put down a group of amendments, with all-Party support, to apply the duties of section 36 of the 1995 Act to taxi-buses, making them accessible to disabled people. It was added to the Bill.²²¹

Clauses 48-51 of the Bill contain the relevant provisions affecting taxi-buses.

²¹⁶ HL Deb 16 January 2008, cc1349-1353

²¹⁷ HL Deb 30 January 2008, cc628-629

²¹⁸ op cit., *Strengthening local delivery: the draft Local Transport Bill* (Vol. 1), para 3.46

²¹⁹ op cit., *The draft Local Transport Bill and the Transport Innovation Fund*, para 74

²²⁰ op cit., *The Local Transport Bill: the Government's response to the consultation* (Vol. 1), para 2.29

²²¹ HL Deb 30 January 2008, cc624-627