



Buses: franchising

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This note provides information about the policy of bus franchising, how it operates in London and the legislation that exists in England to set up 'Quality Contracts', a form of franchising. It also provides information on statutory Quality Partnerships.

The local bus market in England was deregulated in the 1980s. This involved local authorities being forced to sell the municipal bus companies that they owned and opening the market to commercial operators. Ever since then there has been an ongoing debate about whether deregulation has delivered more and better bus services in local areas.

Those who contend that deregulation has been unsuccessful (and in some cases damaging) have continually called for local authorities to be given powers to operate franchised services, much like what happens in London. The Labour Government legislated to give local authorities franchising-like powers to implement what are known as Quality Contract Schemes. No local authority has ever used these powers, or even got to the point of making a formal application to the Secretary of State to use them, though there are constantly stories in the press that one or more area is about to do so.

Alongside the provisions for Quality Contracts, the Labour Government also legislated for statutory Quality Partnerships. This is an arrangement whereby local authorities and bus companies enter into mutual agreements to provide services and infrastructure. These have been more successful.

In December 2011 the Competition Commission published a report into the local bus market in England, which rejected mandatory franchising as a solution to the problems in that market. The Coalition Government published its proposals for the future of the bus industry, including its response to the Competition Commission, in a March 2012 green paper.

As bus policy is devolved, this paper focuses only on policy in England. Information on other bus-related matters can be found on the [Buses Topical Page](#) of the Parliament website.

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1 Franchising

1.1 The policy debate and the view of the Competition Commission

Ever since the Conservative Government deregulated local bus services in England (outside London) in 1986, there have been calls to reintroduce some form of regulation via franchising.¹ Critics of deregulation argue that the introduction of commercial operators into local bus markets has failed to substantially improve competition and has caused a diminution in levels of service. They accept that commercial operators cannot now be forced out of the market and that there can be no return to the municipal bus model that existed before the mid-1980s. However, they do argue that commercial operators should be compelled to deliver a better service than is currently the case and that there should be some democratic accountability via control by local authorities or other locally elected transport bodies.

The Conservative case for deregulation, 1984-86

The Conservatives in the 1980s and early 1990s were very strongly in favour of bringing private investment and management into public transport. They argued that this would improve the passenger experience by making buses and trains more efficient. The basic argument was set out by the Conservatives when proposing the deregulation of the bus industry (outside London) in the mid-1980s. The 1984 buses white paper said:

For 50 years from 1930 to 1980 local bus services were subject to a highly restrictive licensing system. Within this system the belief grew up that the way to provide comprehensive public transport is to protect the existing operators so that their profits from popular routes can cross-subsidise services for which there is less demand. The result of these worthy intentions has been to maintain a pattern of services developed for a different age and to neglect the best parts of the market. There has been too little incentive to develop markets, to woo the customer. Operators have been hampered by a philosophy that is defensive and inward-looking.

[...] There is good evidence that services could be improved and costs reduced if we went about it in a different way. Without the dead hand of restrictive regulation fares could be reduced now on many bus routes and the operator would still make a profit. New and better services would be provided. More people would travel. This is not idle speculation. In 1980 the Government removed regulation from the long-distance coach services. As a result fares have come down, new services have been provided, the number of people travelling has gone up, new vehicles with greater comfort compete for custom. Competition has done all this – and the customer is the beneficiary.

If the customer has the final say, bus operators will look keenly to see where and when people want to travel. If one operator fails to provide a service that is wanted, another will.²

A lot of the case for deregulating the buses was made in contrast to how they operated at that time and to what was then seen as the successful deregulation of the coach industry four years previously. The main claims were that fares would go down, it would be cheaper to run services, there would be more choice for passengers, more jobs in the industry and overall patronage would increase. It also claimed that, over time, competition would end non-commercial cross-subsidy and that this would be a good thing as it would reduce fares and end 'perverse effects'.

¹ information on deregulation can be found in HC Library note [SN1534](#)

² DoT, *Buses*, Cmnd 9300, July 1984, paras 1.4-1.6

It is possible, in some limited circumstances, to compare statistical evidence about these claims (comparing 1986/87 to 2010/11).

Fares

Data shows that on a local bus fares index, fares across the whole of England increased by 270 per cent between 1986/87 and 2011; in London the increase over the same period was 203 per cent; in the English metropolitan areas it was 340 per cent and in England ex-metropolitan areas and London, 220 per cent.

Passenger journeys

The number of passenger journeys on local bus services across England as a whole has increased since deregulation, but only because of an increase in journeys in London; in other areas the number of journeys has declined.³ In 1986/87 across England as a whole there were 4.538 billion passenger journeys on local bus services per annum; by 2010/11 that had increased to 4.609 billion journeys. In London the number of journeys almost doubled from 1.164 billion to 2.269 billion; in the metropolitan areas the number fell from 1.81 billion to 1.055 billion; and in England ex-metropolitan areas and London the number fell from 1,565 billion to 1.284 billion.

Vehicle miles

The number of passenger journeys on local bus services across England as a whole and in every area, has increased since deregulation.⁴ In 1986/87 across England as a whole there were 1.096 billion miles travelled on local bus services per annum; by 2010/11 that had increased to 1.314 billion miles. In London the number of miles increased from 173 million to 299 million; in the metropolitan areas the number increased from 346 million to 349 million; and in England ex-metropolitan areas and London the number fell from 577 million to 666 million. The number of vehicle miles travelled in England outside London peaked in about 2000/01 and has been declining ever since.

Subsidies and financial support

In regard to subsidies/support, comparable data prior to 1996/97 is not available. There is some limited information for 1980/81 to 2001/02, but this is not directly comparable with later data.⁵ Estimated net public transport support paid by central and local government for local bus services, concessionary travel and bus service operators' grant (BSOG) for the period 1996/97 to 2010/11 shows a total increase in funding across England from £797 million per annum to £2.358 billion.⁶

Net government support per passenger journey for local bus travel between 2004/05 and 2010/11 shows a total net increase from 49 pence per mile to 51.2 pence per miles across England. This disguises the fact that BSOG and net public transport support decreased over this period while concessionary fare support increased dramatically (during this period free local bus travel for older and disabled people was introduced). Net support per journey fell in

³ note: there was a change in the way passenger journeys were recorded in the official figures in 2004/05 resulting in a reduction of about 100 million in the figures for journeys in England, outside London

⁴ note: there was a change in the way vehicle miles were recorded in the official figures in 2004/05, with varying results

⁵ DfT's *Transport Statistics Bulletin: A Bulletin of Public Transport Statistics: Great Britain 2002 Edition*, tables 19-21

⁶ DfT, [BUS0502](#) [accessed 23 February 2012]

London quite significantly while it increased slightly in the English metropolitan areas and by almost half in England ex-metropolitan areas and London.⁷

Jobs in the bus industry

DfT has data on staff employed by bus and coach operators from 1965. Two tables are available: one shows staff employed by all bus and coach operators (since 1965), the other shows staff employed by local operators (since 2004/05). There were 167,000 employed in the industry in 1986/87, by 2010/11 this had increased to 171,000.⁸

There are also more qualitative things to say. In 1985, three-quarters of bus turnover was in the hands of the public sector; by 1997, this amounted to approximately seven per cent. Many of the more dubious businesses that took advantage of deregulation to run substandard vehicles on profitable routes were squeezed out and those that remained were committed to modern fleets and long term investment. By 1997 the three largest private groups - Arriva, FirstGroup and Stagecoach - controlled just over half of the bus market by turnover. While it could be argued that deregulation failed to deliver the Conservative Government's stated objective of halting the decline in the bus industry, it did reduce the costs of providing the services and the government subsidy.

Opinions on the effects of deregulation on its 20th anniversary

The twentieth anniversary of bus deregulation in October 2006 prompted several reviews of how the industry stood and whether it was fit for purpose. In taking stock two basic arguments were made on either side of the debate.

In terms of criticism of the deregulated system, 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.⁹ 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.¹⁰ 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) led to streamlined services and cheaper fares.

Then there is the issue of subsidies. In 2008 the Department for Transport estimated that councils outside London were spending more than £800 million per annum supporting bus services from their resources, including council tax, non-domestic rates and non-hypothecated Revenue Support Grant (the general grant to local authorities provided by

⁷ DfT, [BUS0503](#) [accessed 23 February 2012]

⁸ DfT, [BUS0701](#) [accessed 23 February 2012]; note: there was a change in the way the figures were estimated in 2004/05, which resulted in an increase in the number of platform staff

⁹ 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

¹⁰ Transport Committee, [Bus services across the UK](#) (eleventh report of session 2005-06), HC 1317, 26 October 2006

government to support all their activities).¹¹ Subsidised bus services funded by local authorities accounted for 22 per cent of the total mileage operated by bus services in 2009-10 in England outside London.¹² However, the Campaign for Better Transport (CBT) has stated that this masks wide variations around the country, so, for example, only five per cent might be subsidised in an urban area while the figure might be closer to 100 per cent in a rural area.¹³

Others pointed to the successes of deregulation. In November 2005 the Institute for Economic Affairs published a book by Prof. John Hibbs, one of the architects of deregulation. 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.

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.¹⁴

In its 2006 policy paper the Labour Government admitted that deregulation had delivered some benefits but also highlighted its shortcomings:

The existing de-regulated regime has succeeded in controlling costs, encouraged industry led innovation and, in some places, has led to increased responsiveness to

¹¹ DfT, *Local Bus Service Support – Options for Reform: Consultation paper*, March 2008, p7; approximately £330 million of that was via the Revenue Support Grant

¹² [HL Deb 22 December 2010, c322WA](#)

¹³ CBT, *A Short and Practical Campaigning Guide to Save Your Bus*, February 2011, p2

¹⁴ John Hibbs for the IEA, *The Dangers of Bus Re-regulation*, November 2005, pp65-66

passenger needs. But one of its chief aims of on-road competition has not been sustained. Indeed it is doubtful whether this aim was ever realistic in the longer term, except in rare circumstances. And its weaknesses in terms of network planning, short-termism and poor local accountability have become increasingly apparent in some areas as the challenges of traffic congestion and accessibility have become ever greater and the case for radical demand management solutions ever more compelling, especially in England's major urban areas.¹⁵

The policy debate under the Labour Government

In December 2006 the Labour Government published a paper setting out its proposals to reform bus services. They undertook this reform in the light of the failure of any local authority or ITA to implement a Quality Contract, though the legislation had been on the statute book since 2000 (see section 1.3, below). In their 2006 report on the bus industry, the Transport Committee was told by the ITAs (then called PTAs, represented by pteg) that in effect, Quality Contracts were an unsatisfactory halfway house between deregulation and franchising. What they wanted, in effect, was: "only a system similar to [the franchised system in London], with the attendant increase in powers and funding, will improve bus services and patronage in their own metropolitan areas".¹⁶

It is probably worth asking what the difference is between franchising in London and Quality Contracts. It seems to rest on three main pillars: London spends more on its franchising system; Transport for London has a strategic transport role, including highways powers; and therefore London can and has implemented extensive priority measures and demand management for private vehicles in the form of the congestion charge (see section 1.2, below, for further details). As the Transport Committee reported, in effect ITAs could use a combination of their existing powers and Quality Contracts to implement schemes which would have similar effects as franchising in the Capital:

Some witnesses however, argued that many of the benefits achieved in London could be replicated in the PTA areas if only they had the political will. For example, Bus Users UK told us that London has several reasons for its success and that, if adopted in PTA areas, "the argument about regulation would be irrelevant":

- An effective demand management system for road space is in place, in the form of the congestion charge, set initially at £5 per day but now at £8 per day;
- A level of bus revenue subsidy is applied that is almost double all the revenue funding in the rest of the UK put together;
- Effective bus priority measures exist;
- Car-parking charges in the central area are perceived as high, making public transport use in the central area a real alternative; and
- Transport for London has a strategic role that also covers highways.

In evidence to the Public Accounts Committee in January 2006, the Permanent Secretary to the Department for Transport, Sir David Rowlands, agreed with this view. He said that PTA areas could put in place many of the initiatives that have made London a success under the current arrangements; they simply choose not to:

¹⁵ DfT, *Putting passengers first*, December 2006, p34

¹⁶ Transport Committee, *Bus services across the UK* (eleventh report of session 2005-06), HC 1317, 26 October 2006, para 32

"[Manchester and Birmingham] choose to put lower levels of subsidy in ... they have not put in demand restraint on motorcars in the way that we have seen [in London]. Whether or not it would help if they had, effectively, franchising arrangements similar to London is an issue to do with whether or not any of them are going to pursue the issue of quality contracts".¹⁷

The ITAs disputed this, for the following reasons:

... it is clear that the PTA areas do perceive an unfairness in the way the Capital is allowed to manage - and fund - its bus services compared to the deregulated arrangements under which they have to operate. In terms of funding and of powers, Mr Dowd, Merseytravel, told us that London is in a 'different league' to the UK's other metropolitan areas - that Transport for London have an annual spend of £1.4 billion on bus contracts, with a £550 million subsidy, making spending on buses, per head, in London approximately £660, compared to £230 outside. Without the levels of subsidy enjoyed by the capital, the PTAs argue that they are being held to a different, and higher, standard - being asked to achieve growth analogous to that in London but without the tools or the resources to achieve it.¹⁸

In its August 2006 report for pteg, NERA stated, much as the Transport Committee had, that while Quality Contracts might be expected to deliver the step-change in quality that could encourage increased bus use, there were likely to be "significant public sector budgetary implications from achieving this". In addition, NERA took the view that the success of Contracts or franchising would also require potentially unpopular policies to control demand for the private car:

... greater controls on the use of the car in city centres, by means of controls on city centre parking supply and pricing, improved management of main radial traffic capacity with priorities for buses and, where appropriate, increased provision of park-and-ride schemes. Eventually, congestion-related charging for car users would need to become part of the policy implemented to increase bus use. It is difficult to see this becoming possible without local authority control of the key bus service and fare parameters. The full budgetary implications would be dependent upon the degree to which other measures were employed, notably the extent to which increases in peak capacity were required and the commitment to raising revenue from motorists.¹⁹

The ITAs had looked forward to the Competition Commission making some sort of recommendation that would give impetus to their campaign to get franchising back on the table, or at least further amendment to Quality Contracts legislation to make them easier to introduce; to reduce the potential implementation and ongoing administrative costs and to ensure against legal challenge.

Competition Commission conclusions, December 2011

The Competition Commission's December 2011 report on local bus competition found that head-to-head competition in the supply of local bus services was uncommon, despite delivering significant benefits to customers where it was found. It raised concerns that some operators were in effect dividing areas up between them to avoid competition and that this might be more widespread than the Commission had been able to determine. Four features of local bus markets effectively make head-to-head competition uncommon and limit the

¹⁷ *ibid.*, paras 32-33

¹⁸ *ibid.*, para 34; this July 2011 [post on the TAS Partnership blog](#) looks at the subsidy figures for London in some detail and concludes that: "to pretend that their success can be replicated elsewhere in the UK simply by changing the regulatory system and at no cost to the public purse is, frankly, not remotely credible"

¹⁹ *op cit.*, [The Decline in Bus Services in the English PTE areas](#), p38

effectiveness of potential competition and new entry. These features are the existence of: high levels of concentration; barriers to entry and expansion; customer conduct in deciding which bus to catch; and operator conduct by which operators avoid competing with other operators in 'Core Territories' (certain parts of an operator's network which it regards as its 'own' territory) leading to geographic market segregation.

On local authority tendered services, it found that, in most cases, the market worked well. However, in some cases the process of competition was impaired by the way local transport authorities design tenders; and the limited number of potential bidders in some local areas.

Overall, the Commission found that the detriment to consumers and taxpayers as a result of the adverse effects of competition (AECs) in the operation of local bus services (both commercial and tendered services) and the tendering of supported services was considerably in excess of £70 million a year and was likely to be between £115 million and £305 million a year.

The Commission made a number of recommendations to remedy these problems, such as market-opening measures to reduce barriers to entry and expansion; measures to promote competition in relation to the tendering of contracts for supported services; and changes to the wider policy and regulatory environment, including emphasising compliance with and effective enforcement of competition law.²⁰ It did not recommend franchising as a solution to these concerns. However, it did acknowledge that:

... there is existing legislation enabling LTAs to introduce franchising in England, Scotland and Wales and we would not wish to rule out its future application in particular local markets where the respective legislative requirements are met. We also note that LTAs have wider social and policy objectives that are not relevant to this investigation, but which may legitimately lead them to take a different view on the desirability of introducing franchising in relation to the local bus markets for which they are accountable.²¹

The Commission's detailed analysis as to why it did not recommend the introduction of franchising is given in paras 15.343-15.470 of the report.

Policy of the Coalition Government, 2010-

The Coalition Agreement of the Conservative-Liberal Democrat Coalition Government that came to power in May 2010 made one mention of bus services: "We will ... encourage joint working between bus operators and local authorities".²²

There was some difference in emphasis in the respective bus policies of the coalition partners before the election. While the Conservative Manifesto contained the same commitment of "encouraging partnerships between bus operators and local authorities",²³ Shadow Ministers had previously made it plain that they opposed the re-regulatory instruments introduced by the Labour Government. For example, the Conservatives voted against what became Labour's *Local Transport Act 2008* (see below) at Second Reading on the grounds that "... it encourages the introduction of Quality Contract schemes to re-regulate bus networks, thus preventing free competition between bus operators, undermining

²⁰ CC, *Local bus services market investigation*, December 2011, summary

²¹ *ibid.*, para 69

²² HMG, *The Coalition: Our Programme for Government*, May 2010

²³ Conservative Party, *Invitation to join the Government of Britain: the Conservative manifesto 2010*, April 2010, p24

service quality for passengers and jeopardising the partnerships between operators and local authorities that have helped to improve service quality".²⁴

In contrast, the Liberal Democrats were generally in favour of more regulation of the bus industry. The Liberal Democrat Manifesto stated that if elected the party would "Give councils greater powers to regulate bus services according to community needs so that local people get a real say over routes and fares".²⁵ The party broadly supported Labour's reforms as set out in the 2008 Act and disagreed with the Conservative position at Second Reading: "The concept of having partnerships and contracts is right. The concept of cross-subsidy is right; we can now have socially provided services subsidised by profitable services. That is a good idea, and the fact that we lost that opportunity during the past 20 years is part of the problem, particularly in rural areas".²⁶

In March 2012 the government published its green paper on the future of the bus industry. This only has one brief mention of franchising, in the context of Quality Contract schemes (see below). It states:

Local transport policy must be determined and delivered locally, and so the Government does not intend to remove the flexibility for local transport authorities to impose this London-style model for bus services, if they decide that is the best way to deliver their public transport policies. We will, however, monitor the development of any schemes with interest.²⁷

1.2 The system in London

As indicated in section 1.1, above, there has been much debate about whether a Quality Contract scheme would give local authorities outside London the same type of bus network as that in London. However, there are differences between London and other areas – even if they were to implement Quality Contracts: London spends more on its franchising system; Transport for London (TfL) has a strategic transport role, including highways powers; and therefore London can and has implemented extensive priority measures and demand management for private vehicles in the form of the congestion charge.

The [London Regional Transport Act 1984](#), under which the Conservative Government took over control of London Transport (LT) from the Greater London Council (GLC), placed on LT a duty to tender activities and operations where it thought appropriate. This resulted in progressive competitive tendering of bus operations in London after 1985. In London therefore there has been regulated competition – competition for the market rather than the 'on the road' competition of deregulation. The 1984 Act also required LT to set up operating subsidiary companies to run London bus and Underground services. In 1985 London Buses Ltd. (LBL) was formed as a wholly-owned subsidiary of LT and subsequently 11 subsidiary companies of LBL were set up. The LBL subsidiaries were then sold to the private sector in 1994 and London bus routes have since been run by private sector companies through the competitive tendering process.

The [Greater London Authority Act 1999](#) transferred responsibility for London's bus services from LT to Transport for London (TfL). TfL now decides which local services are required for the purpose of providing "safe, integrated, efficient and economic" transport services in

²⁴ [HC Deb 26 March 2008, c204](#)

²⁵ Liberal Democrats, *Liberal Democrat Manifesto 2010*, April 2010, p79

²⁶ [HC Deb 26 March 2008, c220](#)

²⁷ DfT, *Green Light for Better Buses*, March 2012, para 4.11

Greater London and plans the detailed pattern of bus services, known as the London Bus Network. Only TfL, its subsidiary or someone with an agreement with TfL, may provide a service on the network. [London Buses](#), as part of TfL, plans the bus network and controls fares. At present, London Buses uses a route-based tendering system which groups routes into discrete tranches. This allows neighbouring routes to be tendered together and hence for discounts to be achieved for letting a group of routes to one operator. This also allows review of the service structure of each small network prior to tendering.

Between 1984 and 1995 tendering was conducted on a gross cost basis. The essence of this system was that the operator was paid the cost of operating the route, including overheads and profit. Deductions are made from contract payments where, for reasons within the operator's reasonable control, scheduled mileage was not operated. All fares revenue was paid to/retained by London Buses. Net cost contracting was introduced in the mid 1990s. The objective of net cost contracts was to transfer revenue risk to the private sector and thereby provide an incentive for operators to improve quality, increase passenger numbers and thereby increase revenue. However, analysis by London Buses in 1998 showed that net cost contracts did not improve operational performance and incurred greater administrative costs. Also any increased revenue was retained by the operators and hence was not available for investment in the bus network. In 1999 London Buses reverted to gross cost contracts. At the same time a new incentivised contract was developed. The quality incentive contract (QIC) is designed to create a direct link between quality of service (reliability) and contract payments.

1.3 Quality Contracts

How and why they were set up

The Labour Government's 1998 transport White Paper stated that bus partnerships that lacked local authority control and direction might not be sufficient to guarantee the necessary improvements needed to bus services.²⁸ The Labour Government therefore introduced legislation in sections 124-134 of the [Transport Act 2000](#) to give powers to local authorities to enter into Quality Contracts for bus services.²⁹ Section 124(3) defines a Quality Contract scheme as a scheme under which the authority or authorities determine what local services should be provided in the area to which the scheme relates, the standards to which they should be provided and any additional facilities or services which should be provided in that area. They are, in effect, exclusive franchising schemes and no other operators may function in the Quality Contract area. Further, under section 124(1) as originally enacted, they could only be introduced where a local transport authority, or two or more such authorities acting jointly, was satisfied that:

- making a Quality Contracts scheme was “the only practicable way” of implementing the policies set out in their bus strategy or strategies in the area to which the proposed scheme related, and
- the proposed scheme would implement those policies in a way which was economic, efficient and effective.

Under a Contract scheme, the local authority determines what local services should be provided in the area concerned (including the routes, the timetable and the fares) and lets contracts with bus operators, granting them exclusive rights to provide services to the

²⁸ DETR, [A new deal for transport: better for everyone](#), Cm 3950, July 1998, para 3.20

²⁹ introduced by the [Transport Act 2000 \(Commencement No. 7\) Order 2001 \(SI 2001/3342\)](#) on 26 October 2001

authority's specification. The authority may make payments to the provider of the services and either party may be required to provide additional features or services.

An application by a local authority to move to Quality Contracts for all or part of its services was subject to prior ministerial approval, or that of the National Assembly for Wales or the Scottish Executive. The onus was on the local authority to demonstrate as part of its Local Transport Plan (LTP) that the benefits could not be met by other means and that any extra costs involved would be offset by other benefits. The Labour Government made it clear when it proposed the legislation that it only expected a minority of cases to be covered by Quality Contracts. No authority has ever applied for a Contract.

Some of the advantages and disadvantages of a contracting system were set out in the 1999 bus consultation paper:

The expected benefits of a 'contracted' bus network include stability of the network and services, local authority control over fares and the ability to specify the quality and quantity of services, and the connections with other buses - or other modes. There is also an argument that passengers would benefit if operators used revenues on the busier routes to subsidise the less busy ones.

But there are also potential disadvantages. Decision-making would be largely removed from the operators, with a danger that there would be less responsiveness to the customer, reduced flexibility and less incentive to innovate. Smaller operators in particular could find themselves squeezed out by the larger groups. Experience suggests that contracting can become a competition between operators for the lowest-cost wages and conditions for staff. And there would be costs to local authorities in setting up and monitoring bus Quality Contracts.

Bus franchising in various forms is fairly common elsewhere in Europe, though other circumstances differ. Public ownership in the bus sector is still high in many parts of Europe compared with the UK, and public subsidy (as a percentage of operating costs) tends to be substantially higher. Results vary from country to country in terms of service levels and the degree of integration and no single model emerges as a template for success.³⁰

The bus operators have generally been supportive of the idea of Quality Partnerships, but less enthusiastic about Contracts. They consider them to be bureaucratic and inflexible, to lead to increased public expenditure, and reduce the incentive for operators to improve the quality and quantity of services, to the detriment of the travelling public. Franchise administrators, rather than the commercial operators, would take an increasing role in decision making, based on short-term rather than long-term impacts. There could be practical and legal problems over the withdrawal of a right to offer a service to the public that could lead to compensation claims. However, the bus operators accepted their existence was a strong inducement to make partnerships work.³¹

Minor changes to improve implementation

In 2003, the then Secretary of State for Transport, Alistair Darling, stated that some changes might be necessary to improve bus patronage.³² In February 2004 the then Transport

³⁰ DETR, *From workhorse to thoroughbred: a better role for bus travel*, March 1999, paras 6.4-6.6

³¹ the big five operators have repeatedly made these points to the Transport Committee, see for example: op cit., HC 32, ninth report of session 1998-99; *Bus services across the UK* (eleventh report of session 2005-06), HC 1317, 26 October 2006; and *The draft Local Transport Bill and the Transport Innovation Fund* (ninth report of session 2006-07), HC 692, 3 August 2007

³² [HC Deb 21 October 2003, c491](#)

Minister, Tony McNulty, announced a consultation on reducing the 21 month implementation period for Quality Contracts in a bid to improve their effectiveness.³³ In a subsequent debate, he commented:

We are keen to remove barriers to the introduction of a Quality Contract where the criteria set down in the 2000 Act can be met, and I am grateful for my hon. Friend's kind words on the consultation to reduce significantly the 21-month statutory minimum waiting period before implementation of a scheme. We are analysing the results of that consultation, and we will shortly publish for consultation guidance on applying for a Quality Contract. That is important, not least because metropolitan and other areas have suggested that the 21-month period has been an impediment to the regulatory framework, and we are happy to consider that.³⁴

The *Transport Act 2000 (commencement of Quality Contracts schemes) (England) Order 2005 (SI 2005/75)* reduced the implementation period to six months from 1 March 2005. The benefits of the change were considered to be a quicker introduction for the improvements that a Contracts scheme would bring and an increase in the number of applications to implement a scheme.³⁵ Revised Quality Contracts guidance, taking account of the change, was issued to English local authorities by the Department for Transport in February 2005.³⁶

Reconsideration of the scheme and changes to increase take-up

In the years following the implementation of the 2000 Act there was a debate about why no Contracts scheme was ever applied for, let alone implemented. Bus operators argued that this was because the existing system was working and delivering better bus services, thus there was no need for Contracts; conversely, many local authorities, and the ITAs in particular, argued that the means by which one could obtain a Contract were too onerous. ITAs consistently made it clear that in their view the deregulated system did not work and they required more control over bus services in their areas in order to grow patronage. The Transport Select Committee looked at this issue in its 2006 report on the bus industry, in which it came to similar conclusions to the ITAs and advocated a simplification of the implementation rules, a guarantee from the Labour Government that bus operators could not sue local authorities if they tried to implement a Contract, and increased powers for the traffic commissioners to enforce contracts.³⁷ Previously, in May 2006, the Public Accounts Committee had also recommended that the government review the Contract criteria.³⁸

In its December 2006 policy paper, *Putting Passengers First*, the government put forward proposals to make 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”.³⁹ These proposals were initially set out in the 2007 draft Bill and the Bill proper, introduced in the 2007-08 session of Parliament. The changes proposed to Quality Contracts in what became the *Local Transport Act 2008* changed during the passage of the legislation through Parliament. For an account of the proposals as they entered the Commons, having been passed by the House of Lords, see

³³ HC Deb 4 February 2004, c36WS

³⁴ HC Deb 17 May 2004, cc798-9

³⁵ *Explanatory Memorandum to SI 2005/75*, paras 19-23

³⁶ DfT, *Quality Contract schemes for bus services: Guidance to English local authorities*, February 2005

³⁷ op cit., *Bus services across the UK*, recommendations 2-8 and 12

³⁸ PAC, *Delivery chain analysis for bus services in England* (forty-third report of session 2005-06), HC 851, 23 May 2006, para 5

³⁹ DfT, *Putting Passengers First*, December 2006, p7

[section III of HC Library research paper RP 08/18](#); and for an account of the changes made at Commons Committee stage, see [section III.A.2 of RP 08/49](#).

Sections 19 to 45 of the 2008 Act made changes to the arrangements for Quality Contract schemes in England (with some changes also applying to Wales) by amending sections 124 to 134 of the 2000 Act. The main changes are as follows:

- replacement of the existing requirement that a scheme must be the "only practicable way" of implementing the policies in the local authority's bus strategy with a **new set of criteria**;
- abolition of the **requirement for schemes in England to be approved by the Secretary of State**; instead, there will be a new type of board ("QCS boards") to provide advice and recommendations to the authority proposing to make the scheme;
- a **right of appeal** to the Transport Tribunal against an English local transport authority's decision to make a scheme;
- to provide for certain **employment protections** to apply to workers whose jobs are affected by the implementation of a scheme;
- to allow an authority who makes a scheme to **operate local bus services** within the area of that scheme in certain very limited circumstances; and
- a number of smaller changes to allow schemes to be implemented in stages, to extend the maximum duration of Contracts, to enable schemes to be continued beyond their initial period, and generally to allow greater flexibility.

In July 2009 the government published a consultation on draft guidance and five sets of draft regulations that would introduce the changes to Contracts schemes outlined in the 2008 Act.⁴⁰ In December 2009 the government announced that the new regime for Quality Contracts would come into force on 11 January 2010.⁴¹

However, there still remained some areas which would require further legislative action:

The Department for Transport is also working with the Ministry of Justice to prepare the necessary secondary legislation to provide for appeals relating to QCSs to be heard by the Upper Tribunal. The necessary Order will be subject to the affirmative resolution procedure in both Houses of Parliament. Meanwhile the recruitment process for a panel of prospective QCS board members is beginning in parallel with the publication of this response to the consultation. These remaining processes need not delay local authorities who may be starting to develop proposals for QCSs.⁴²

The then Transport Minister, Sadiq Khan, announced the appointment of the Quality Contract Schemes Board Panel in March 2010.⁴³

⁴⁰ DfT, [Local Transport Act 2008 Quality contracts schemes: Consultation on draft regulations and guidance](#), July 2009

⁴¹ DfT, [Local Transport Act 2008 - Regulations and guidance about quality contracts schemes: response to consultation](#), December 2009; via four statutory instruments: [SI 2009/3243](#), [SI 2009/3244](#), [SI 2009/3245](#) and [SI 2009/3246](#)

⁴² *ibid.*, para 40

⁴³ [HC Deb 30 March 2010, cc115-117WS](#)

Costs

In its December 2011 report the Competition Commission put the cost of implementing a Quality Contracts scheme at up to £1 million with annual running costs of approximately the same amount:

There are several classes of additional costs that may be incurred through introducing area-based franchising:

(a) LTAs are likely to incur set-up costs and additional running costs associated with operating the franchise regimes (such as network planning and design). The PTEs currently looking at introducing franchising estimated initial set-up costs for a QCS up to £1 million and the additional running costs for each scheme at below £1 million a year. Research by TAS in 2003 suggested that annual costs for a PTE could lie within a range of £1–£5 million.

(b) Operators may incur some extra costs associated with participating in the bidding process. The extent of these costs will be partly determined by the complexity of the tender process and the contract specification

(c) Depending on the specification of the contract, some risks may be transferred from bus operators to the LTA and hence to the public sector. This is not necessarily a cost for the economy as a whole, but may be a relevant consideration for LTAs when considering whether to introduce area-based franchising.

Against this, LTAs may be able to achieve some savings in overall costs, both through network design and through reductions in operator returns, where these are currently above the cost of capital. Whether these savings are achievable, in practice, will depend on the extent to which the LTA is able to achieve competitive bids and optimize the specification of the network.⁴⁴

2 Quality Partnerships

What are they?

A Quality Partnership scheme is a scheme made by a local transport authority under which that authority provides particular facilities at specific locations along the routes used by local bus services, and operators of local services who wish to use those facilities agree to provide services of a particular standard. For example, bus operators invest in higher quality services, including new vehicles (often environmentally friendly ones) and staff training. Local authorities invest in traffic management schemes that give buses priority and/or in better bus stations, shelters and other facilities for passengers. Often too there are concerted efforts to improve passenger information, covering both timetables - how the buses ought to run - and information on how they actually are running.

How and why they were set up

By the late 1990s, the Labour Government considered that partnerships were the key to improvements in bus use. Most commentators agreed that the main successes of the 1990s had come where local authorities had worked with operators to establish higher quality services on selected corridors. Examples such as Ipswich's Superoute 66, Edinburgh Greenways and the Leeds Guided Busway were often cited. One of the most extensive is Greater Manchester's 1998 Countywide Agreement covering a population of over 2.5 million. Quality Partnerships have been developed in over 30 other towns and cities, including Aberdeen, Birmingham, Brighton, Bristol, Nottingham and Oxford. The 1999 bus consultation

⁴⁴ op cit., [Local bus services market investigation](#), paras 15.450-51

paper⁴⁵ reported that they had increased patronage by typically 10 to 20 per cent and by up to 40 per cent where there was bus segregation and substantial improvements in roadside infrastructure. They also attracted new passengers who previously used cars and taxis.⁴⁶

Not everyone agreed, however. For example, the Transport Sub-Committee of the then Environment, Transport and Regional Affairs Committee thought that most of the schemes were too small and unambitious to reduce bus journey times significantly.⁴⁷ The Audit Commission reported similar findings. It criticised Quality Partnerships and argued that local authorities invested far more than the bus operators but had few specific objectives and no systematic programme to assess results. It found a shortage of local authority funds and a chronological mismatch between operator and authority spending periods. The Commission maintained that there was only limited evidence demonstrating that partnerships resulted in a switch in trips from the car to public transport, despite the fact that this was often the major reason for investing in improved bus provisions. It also suggested that increases in patronage were generally due to existing passengers travelling more often.⁴⁸

The Labour Government accepted the argument, advanced both by operators and by local authorities, that partnerships would be more effective, and more widely adopted, if they had statutory force and included the necessary legislation in sections 114-123 of the *Transport Act 2000*.⁴⁹ Statutory backing allows local authorities to set quality standards for the partnership facilities that they provide such as bus lanes, or access to high-quality shelters with real-time passenger information. Buses that do not meet the standards can be excluded. This gives local authorities extra scope for influencing bus quality, whilst providing operators with the confidence to invest and to decide about service provision and innovation. The 1999 bus consultation paper set out the key legislative provisions of a statutory partnership as follows:

fair and open access: all operators would be entitled to be a QP partner so long as they met the necessary standards. There would be no room for local discrimination in favour of particular operators;

QPs would be about **quality standards** - typically vehicle standards: easy-access low floors, features to assist the mobility or visually impaired (as recommended by the Disabled Persons Transport Advisory Committee), emission standards or other aspects like driver training/customer care qualifications (e.g. NVQs). If a local authority wants extra routes or more frequent services, it can buy them through tendering ...;

the power of a local authority to exclude operators would apply only to the facilities it was providing or improving as **part of the QP agreement**. It could not be used to ban non-QP operators from whole routes or areas...;

before implementing a QP, a local authority would be obliged to **consult** all operators in their area who used, or might use, the QP facilities, to make clear what those facilities would be and what standards it would be imposing on bus operators in return for using them. There should also be consultation with the local community.⁵⁰

⁴⁵ op cit., *From workhorse to thoroughbred: a better role for bus travel*

⁴⁶ ibid., p22

⁴⁷ ETRA Committee, *Integrated transport white paper* (ninth report of session 1998-99), HC 32, 31 March 1999, para 87

⁴⁸ Audit Commission, *All aboard: a review of local transport and travel in urban areas outside London*, 1999

⁴⁹ introduced by the *Transport Act 2000 (Commencement No. 7) Order 2001 (SI 2001/3342)* on 26 October 2001

⁵⁰ op cit., *From workhorse to thoroughbred*, para 4.6

Section 119 of the 2000 Act allows regulations to be made regarding the facilities to be included in a partnership. Following consultation,⁵¹ regulations made in 2001 provide that facilities may not be incorporated if they pre-date the partnership scheme by more than ten years; and may only be incorporated if they pre-date it by between five and ten years if bus operators relying on the facilities do not object.⁵² Compliance with the quality standards in a partnership scheme are enforced through the bus registration system, overseen by the traffic commissioners who have powers to impose financial penalties and restrictions on an operator's licence.⁵³

Partnerships vary enormously and can be adapted to suit different locations and situations. Highest standards can be set where there is high demand and a need to restrain local car traffic, with priority measures helping to give the bus an advantage in congested streets. More modest standards might be appropriate where operators stand to benefit less from local authority investment, or where the level of demand may not justify high levels of investment. Rural Quality Partnerships, for example, might have a stronger emphasis on better information for passengers and improving bus stops and shelters. The success of a Quality Partnership can be judged on the basis of four criteria:

- higher bus ridership;
- a good rate of return on bus operator investment;
- a modal shift from car to bus; and
- a consequent reduction in vehicle emissions and accidents.

Reconsideration of the scheme and changes to improve functionality

In December 2006, after an extensive review of the bus sector and in response to the continuing criticisms of the bus industry from, in particular, the ITAs, the Labour Government published a policy paper, *Putting Passengers First* aimed at reforming the framework established by the 2000 Act. The paper summarised the government's proposals for Quality Partnerships 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.⁵⁴

In May 2007 there followed a draft *Local Transport Bill*.⁵⁵ On Quality Partnerships, the draft Bill proposed:

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;

⁵¹ DETR, *Transport Act 2000: statutory Quality Partnership schemes*, May 2001

⁵² *Quality Partnership Schemes (Existing Facilities) Regulations 2001 (SI 2001/3317)*

⁵³ further information on the bus-related powers of traffic commissioners can be found in HC Library note [SN1523](#)

⁵⁴ op cit., *Putting Passengers First*, p7

⁵⁵ DfT, *Strengthening local delivery: the draft Local Transport Bill*, Cm 7043, May 2007:

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 for it to 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.⁵⁶

The Transport Committee conducted pre-legislative scrutiny of the draft Bill and published a report in July 2007.⁵⁷ For an account of the proposals on Quality Partnerships as they entered the Commons, having been passed by the House of Lords, see [section III of HC Library Research Paper RP 08/18](#); and for an account of the changes made at Commons Committee stage, see [section III.A.1 of RP 08/49](#).

Sections 13 to 18 of the [Local Transport Act 2008](#) make changes to the arrangements for Quality Partnership schemes in England and Wales by amending sections 114 to 123 of the 2000 Act. The main changes are as follows:

- schemes will be able to include **service frequency, timings and maximum fares** providing there are no "admissible objections" from relevant bus operators;
- both facilities and service standards may be **phased in** on predetermined dates over a period of time, rather than the current procedure under which all facilities and standards must be available when the scheme takes effect; and
- where a scheme is in operation, local transport authorities will be able to **impose restrictions on the registration of certain local services** where the authority considers that the provision of additional local services in the area of a scheme may be detrimental to the provision of services under that scheme.

In July 2008 the government published a consultation on several sets of draft regulations and guidance, including those on Quality Partnerships in England.⁵⁸ The response to the consultation was published in March 2009,⁵⁹ alongside the *Quality Partnership Schemes (England) Regulations 2009 (SI 2009/445)*, which came into force on 6 April 2009, and the final edition of the statutory guidance.⁶⁰

Competition aspects

Since the introduction of the 2000 Act there has been increasing co-operation between bus companies. Operators recognise that if they are to expand their market, they have to win passengers from the private car. Concern has been expressed that partnerships could be anti-competitive. In 1999 the Audit Commission found doubts expressed over the legality of partnerships, in terms of competition law, and warned that "robust defences against cartels or other anti-competitive practices will be essential" were they to be introduced.⁶¹ On the

⁵⁶ *ibid.*, Vol. 1, para 3.20

⁵⁷ *op cit.*, [The draft Local Transport Bill and the Transport Innovation Fund](#)

⁵⁸ DfT, [Local Transport Bill – Consultation on bus partnership guidance and regulations](#), 23 July 2008

⁵⁹ DfT, [Local Transport Act 2008 Regulations and guidance on bus partnerships: response to consultation](#), March 2009

⁶⁰ DfT, [The Local Transport Act 2008 Quality partnership schemes: Statutory guidance to English local transport authorities and metropolitan district councils](#), March 2009

⁶¹ *op cit.*, [All aboard: a review of local transport and travel in urban areas outside London](#)

other hand, some operators and local authorities were wary about agreeing to Quality Partnerships until the effects of the *Competition Act 1998*, which came into effect on 1 March 2000, had been clarified. Some local authorities had difficulty constructing multi-operator partnerships that would not be construed as illegal 'market sharing'. Following the guidance issued by the OFT in October 2003 these problems were largely overcome.⁶²

In December 2011 the Competition Commission published the final report of its inquiry into the local bus market in England. It found many examples of Quality Partnerships improving the passenger experience and did not conclude that they posed any threat to competition. In fact, in some instances, they could help to improve it. Examples highlighted in the report included:

- Putting in place transparent and fair methods of managing scarce road capacity in busy city centres while facilitating competition to operate bus services within these cities;
- Identifying a limited number of specific dates on which service changes take place each year;
- Precluding behaviour that would constitute 'cheap exclusion' (actions that damage the service of a rival and do not provide direct benefits to passengers);
- Developing agreements between operators to accept each other's multi-journey tickets on particular corridors; and
- Developing qualifying agreements between operators to run even headways on particular corridors, while continuing to compete on other dimensions (e.g. fares and quality of service).⁶³

⁶² OFT, *The Transport Act 2000 ...: Guidance on the Competition Test* (OFT 393), October 2003, p15

⁶³ op cit., *Local bus services market investigation*, para 15.388