

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY  
REGIONAL PLANNING COMMITTEE**

Date: 25 July 2007

Subject: **Strengthening Local Delivery : The Draft Local Transport Bill - consultation response**

Report of: Planning Manager

**Recommendation:**

It is recommended that the Committee agree the response set out in Annex II.

**Purpose of Report:**

To agree a response to be submitted to the Department for Transport as part of the consultation on the Draft Local Transport Bill

**Key Issues:**

The Department for Transport has released a Draft Bill on the future of local transport. The Bill, entitled 'strengthening local delivery' follows a series of recent government proposals to empower local delivery, and in particular attempts to introduce proposals to progress governance and delivery mechanisms for local transport.

The draft Bill is principally composed of proposed legislation changes in the following areas:

- Public transport service agreements
- Local transport governance
- Road user charging

There are a number of questions associated with the draft Bill to which the Department for Transport seek a response (Annex I). A draft response to these questions, in so far as they apply at the regional/sub-regional level, is set out in Annex II.

## **1. Background**

- 1.1 On the 21 May 2007, the Department for Transport (DfT) released the Consultation Draft on the Local Transport Bill: 'Strengthening Local Transport Delivery'. The draft Bill comprises three core strands; improving local bus transport services, local transport governance and road user charging. While much of the draft Bill focuses on local implementation, the strategic consequences could be substantive, particularly at the sub-regional level.
- 1.2 Consultation on the draft Bill ends on 7 September 2007. The DfT has indicated that, subject to the normal caveats, the intention is to present a Bill during the next session of Parliament.

## **2. Improving local bus transport**

- 2.1 The draft Bill contains two elements of particular relevance to improving bus services across the region. Firstly, legislative changes for the Voluntary Partnership Agreements, Quality Partnership Agreements and Quality Contracts; secondly, a revised role for Traffic Commissioners.
- 2.2 Voluntary Partnership Agreements (VPA)
  - 2.2.1 The draft Bill identifies anti-competition laws as the most significant barrier to implementing voluntary partnership agreements between local authorities and more than one bus operator. Currently a VPA involving two or more bus operators is subject to the Competition Act 1998, which uses a general test to assess whether an agreement is anti-competitive. The draft Bill proposes to extend the test within the Transport Act (2000), which is used specifically for assessing whether competition issues have satisfactorily been addressed during the formulation of Quality Partnership Agreements.
- 2.3 Quality Partnership Schemes/Quality Contracts (QPS/QC)
  - 2.3.1 In terms of QPS, the draft Bill proposes to allow frequency of services and maximum fares to be included within schemes. Both QPS and QC are legal agreements between a local authority and public transport operators, and essentially close 'open market' provision of bus services. The draft Bill identifies that the previous test to prove that a QC is the 'only possible way' to improve services is too high a hurdle to satisfy; as such, the draft Bill proposes a 'public interest' test, which would involve the LA demonstrating the following:
    - How the scheme would increase patronage
    - The benefits offered to passengers
    - How the agreement contributes to local transport policies
    - That any adverse effects on competition will be proportionately offset by the potential benefits to the service.

- 2.3.2 The draft Bill states that DfT will release further guidance on this matter. Further guidance is promised to help facilitate QC between local authorities and small bus operators, which could potentially be awarded on a 'route-by-route' basis. In both cases, the draft Bill would allow improvements incumbent upon the local authority to be delivered in phases, rather than delivery commencing on the date of agreement.
- 2.4 Traffic Commissioners
- 2.4.1 Currently Traffic Commissioners have powers to penalise operators who fail to run services in accordance with their registered timetable. However, these powers are often not acted on, due to a lack of access to punctuality data collected by operators. Furthermore, Commissioners have minimal powers to request information from local authorities, which is influential at enforcement enquiries.
- 2.4.2 The draft Bill proposes a new regime where operators would have a duty to keep records on service punctuality. Commissioners would be granted powers to call for evidence from local authorities, and require local authorities and operators to plan remedial measures where needed to address performance issues. In addition, Senior Traffic Commissioners would adopt a statutory role, with powers to co-ordinate the work of Traffic Commissioners.

### **3. Local Transport Governance**

- 3.1 The main focus is centred on the Passenger Transport Authorities (PTA) and the metropolitan areas, proposing new legislation that would enable changes to be made to the structure of PTAs and potentially the reallocation of transport delivery powers. The draft Bill also makes provision for the creation of new PTAs in response to a proposal put forward by local authorities.
- 3.2 Formation of PTAs
- 3.2.1 Under the draft Bill proposals two or more councils (county or unitary) to approach the Secretary of State with the view to establishing a PTA. The authorities concerned would have to conduct a review, in which they would need to prove that establishing a PTA would improve the implementation of statutory transport functions and improve local transport services.
- 3.2.2 The draft Bill states that a review would have three possible outcomes:
- That everything is fine and therefore a PTA is not needed;
  - That changes are needed but could be done through voluntary agreements;
  - That changes are needed and require legislative backing.

3.2.3 The decision to allow a PTA would rest with the Secretary of State, and would be assessed against the Sub-national Economic Development and Regeneration Review. It is anticipated that further guidance on reviews will be issued in due course.

### 3.3 Additional Powers to be granted to PTAs

3.3.1 The draft Bill proposes to allow delivery responsibilities to be transferred from one body to another within a PTA. While in the majority of cases this will be between local authorities and the PTA, the Bill does allow the potential to transfer powers held by the Secretary of State, which includes Highways Agency and heavy rail delivery responsibilities. PTAs would also have a power of direction to Local Transport Authorities within their area. This would include direction on related issues to the purpose of the PTA, for example issues such as installation of bus priority lanes, or scheduling maintenance to reduce disruption.

## 4. Reforming Legislation – Road Charging

4.1 The draft Bill continues with the road charging powers outlined in the Transport Act (2000), insofar as the ultimate responsibility lies with local authorities. However, it proposes some changes that it suggests will assist local implementation. In particular, the draft Bill proposes to set up a 'framework of local accountability', which in effect will replace the Secretary of State's role in approving schemes and directing the application of net proceeds from road pricing.

4.2 A key consequence is that the Secretary of State could no longer direct an inquiry into a proposed scheme; any such inquiry would be at the discretion of the proposing authority. The decision to allow a scheme would still rest with the relevant national authority, however the draft Bill proposes that local accountability mechanisms will be given greater weight in decision making; backed with additional 'safeguards' in the form of guidance and regulations. The draft Bill also stresses that there are no legislative changes that could enact a national road-pricing scheme. Any such proposal would require new legislation, which the draft Bill suggests would unlikely take place before 'mid-next decade'.

4.3 Under the current Transport Act, revenue from road pricing schemes is invested in 'early relevant schemes' during the 'initial period'. The draft Bill aims to widen the scope, by allowing net revenue to be invested in any proposal that contributes to achieving a local transport policy.

## 5. Discussion

5.1 Improving local bus transport

- 5.1.1 The proposals for improving local bus transport seek to reduce legislative burden and to increase the scope of both formal contracts and voluntary agreements. However, for such measures to be effective requires the assumption that the current lack of take up is indeed down to legislative issues. Consequently, the proposals are generally procedural in nature, and do not raise the issue of the capacity for local authorities to fund such schemes - which is particularly fundamental for entering in Quality Contracts.
- 5.1.2 The ability to enter into voluntary agreements with more than one operator does indeed offer new potential for service delivery. However, without additional support for monitoring, enforcement will continue to be a considerable hurdle. In short, while the scope of agreements has increased, the ability to deliver receives no further support.
- 5.1.3 Authorities in the region have expressed the view that the main reason for not entering into Quality Contracts/Agreements is due to the fiscal obligation that they would incur. In many cases, local authorities simply cannot guarantee the funding commitment requested by operators over the life of a Contract. As such, the proposal to strengthen the scope of statutory arrangements is unlikely to be effective, unless equally matched by increased funding to local authorities.
- 5.1.4 It is therefore likely that voluntary arrangements will continue to be the most commonly implemented mechanism. However, since the draft Bill does little to offer statutory enforcement of 'minimum service' levels, it is unlikely that the output of such agreements will be improved. It is considered that the draft Bill needs to offer a stronger regulatory framework incumbent on operators, especially where a local authority is unable to call on the legal assurance of a Quality Contract.
- 5.1.5 Increasing the powers of the Traffic Commissioners is a positive move. However, there is a potential conflict between the duties of local authorities under the Traffic Management Act and the proposed role of the Traffic Commissioners. Another concern is that the geographical areas currently governed by Traffic Commissioners (of which there are only eight within England and Wales), are of such a scale and unique geography as to potentially not be effective, and at worst undermine some activity.
- 5.1.6 Furthermore, it is also not clear to what extent Traffic Commissioners take into account local transport plans and policies. For example, two recently published documents from the commissioners, an annual report and a review paper of the commissioners future role, failed to mention the relevance of local transport plans in regards to granting bus and taxi licences.
- 5.2 Local transport governance
- 5.2.1 While the draft Bill allows the formulation of PTAs between two or more authorities, the geographical extent must encompass the administrative boundary of the authorities concerned in their entirety.

- 5.2.2 In some parts of the region there are specific districts that may benefit from increased collaboration under PTA status – insofar as they share similar transport needs. However, the fact that the agreement must encompass the full extent of any county or unitary authority covered by the PTA is likely to make such an avenue unattractive to local transport authorities; it is certainly inconsistent with the philosophy of adopting a spatial planning approach to policy delivery as set out in the South East Plan. Increased levels of voluntary cross-boundary working are likely to be less effective and in any respect the draft Bill contains limited proposals to encourage this.
- 5.2.3 In this regard, the proposals in the draft Bill are only favourable to areas with particular administrative boundaries. It is clear that the potential powers offered to PTAs will be significant. However, under the current proposals, this will likely only be afforded to a conglomerate of urban authorities. Due to the geography of this region, it is unlikely to be able to take advantage of these powers in their current form.
- 5.2.4 It is considered that the draft Bill should offer the potential for local authorities to put forward the most appropriate geographical boundary on which a PTA should be based, and to explain how this would be administered. This would, for example, enable the local authorities working together as PUSH to consider, if they so wished, the potential benefits of a PTA.
- 5.3 Road Charging
- 5.3.1 The proposed changes to road charging do indeed allow the potential for greater account of local circumstance - in terms of the type of scheme and the chances of successful implementation. However, it is debatable whether such an approach would assist the implementation of such measures on the ground, the major issue rather being acceptability as opposed to legislative barrier. The Government need to set out a more comprehensive framework on the implementation of road pricing.

## **6. Next Steps**

- 6.1 Consultation on the draft Bill ends on 7 September 2007; a response has been prepared for the Committee's approval in Annex II. The Department for Transport has indicated that, subject to the normal caveats, the intention is to present a Bill during the next session of Parliament.

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**Summary of consultation questions in the Draft Local Transport Bill  
(Relevant to this report)**

Q1: What are your views on the proposals relating to:

- (a) voluntary partnership agreements;
- (b) quality partnership schemes;
- (c) quality contracts schemes;
- (d) bus punctuality;
- (e) community transport; and
- (f) other measures?

Q2: What are your views on the specific questions relating to competition legislation?

Q3: Do the proposed “public interest” criteria for quality contracts schemes cover the right issues? Do they strike the right balance between making schemes a realistic option and protecting the legitimate interests of bus operators?

Q6: Do you agree that governance arrangements in the metropolitan areas outside London require reform?

Q7: Do you agree that there is a need for flexible arrangements which allow for variation in the governance developed for different areas?

Q8: Do you agree that the cities themselves should be asked to publish proposals on revised governance? Do you have views on which body or bodies should be asked to prepare those proposals?

Q9: Do you agree that the Bill should enable broad changes, or should there be limitations on what change might be allowed?

Q10: Do you think that the power to review and amend governance arrangements should allow development over time, or should the powers lapse after an initial review?

Q11: Do you agree with the changes we are proposing to the powers and duties of PTAs in all the metropolitan counties?

Q12: Do you agree with the proposed changes to Local Transport Plans? Should these changes be applied only? to the metropolitan counties, or should they be applied elsewhere, for example to other city regions?

Q13: What are your views on the proposals relating to:

- (a) local freedom, flexibility and accountability
- (b) consistency and interoperability; and
- (c) information?

Q14: To what extent is there a problem of ‘inconsistency’ between the approaches of the different traffic commissioners, and what costs does this impose on PSV and goods vehicle operators?

## SOUTH EAST ENGLAND REGIONAL ASSEMBLY

### RESPONSE TO DRAFT LOCAL TRANSPORT BILL

#### 1. Introduction

- 1.1 A key principle underpinning both the South East Plan (the Regional Spatial Strategy for South East England) is to encourage modal shift by improving public transport networks, and to achieve a rebalancing of the transport network in favour of non-car modes. Achieving this in practice requires action by both Local Authorities and private sector operators. It also requires the Government to ensure that adequate systems and legislation is in place, and that assured adequate funding is available. We welcome changes to legislation that would result in enhanced provision of bus services, and measures that would assist modal shift to non-car modes. However, any such proposals will also need to be backed by further investment by the government.

#### 2. General Comments on the Draft Local Transport Bill

- 2.1 The proposals in the Draft Local Transport Bill are encouraging, as they offer an improved legislative framework for local authorities to enter into public transport service agreements and to develop local transport governance arrangements.
- 2.2 The proposed legislative changes to the scope and availability of public transport agreements between local authorities and public transport operators (both voluntary and statutory) is considered a step forward. Likewise, the potential to develop PTAs (Passenger Transport Authorities), with the potential to take on devolved powers, is a positive move. However, the benefits of the proposed changes in respect of local road user charging are unclear in the continued absence of the Government taking the leadership that such a major policy initiative requires.
- 2.3 **We remain concerned that the draft Bill does not address some of the main issues behind public transport service provision. Furthermore, we are concerned that the Bill fails to consider fully the needs of non-metropolitan areas. We believe that there is scope for the Bill to give greater encouragement to the development of governance arrangements at the sub-regional level. In particular there is a need for greater flexibility to be available to local authorities in respect of the boundary of a PTA.**

#### 3. Specific Comments on Proposals

- 3.1 Improving local bus transport
- 3.1.1 **We consider the move to reduce the conflict between anti-competition laws and voluntary service agreements as particularly**

**welcome. Likewise replacing the ‘only possible way’ test with a ‘public interest test’, for considering the implementation of Quality Contracts, is supported.** However, we are concerned that the Bill implies that a lack of ‘take-up’ of agreements, in particular statutory agreements, is primarily down to legislative burdens.

- 3.1.2 Local Authorities in the South East have made it clear that they are often not able to enter into statutory agreements because they simply are not in a position to commit a revenue funding system over the lifetime of an agreement (which can be as long as 10 years). Furthermore, the performance of voluntary agreements is reliant on local authority spending. Since the draft Bill does little to offer ‘statutory’ enforcement of service provision, it is likely that local authorities will have to fund monitoring and enforcement action.
- 3.1.3 **The Government must accept that effective service agreements need to be matched with consistent and adequate funding streams.**
- 3.1.4 **We support the proposals in the draft Bill to increase the enforcement powers of Traffic Commissioners.** However, we are concerned that there appears to be no correlation between the role of Commissioners and the objectives of statutory Local Transport Plans. While it is accepted that the Commissioners should remain impartial, it is difficult to understand how they can contribute to local delivery of bus and taxi provision if there is no direct regard given to Local Transport Plans. With this point in mind, it is difficult to understand the strategic role of Commissioners when their geographical boundaries bear no relation to spatial planning boundaries, and there will be a need to ensure that the Commissioners are funded to undertake this additional role so as not to introduce unnecessary delay.
- 3.1.5 **We recommend that Traffic Commissioners are required to take greater account of the statutory Development Plan and Local Transport Plan when conducting their duties. We also recommend that the boundaries used for the appointment of Traffic Commissioners are revised such that they better reflect the spatial planning boundaries.**
- 3.2 Local Transport Governance
- 3.2.1 **We support the proposal to facilitate the creation of new Passenger Transport Authorities; and in particular welcome the possibility to devolve delivery powers from Government agencies.** However we do not believe it appropriate to make it a requirement for the boundary of a new PTA to be defined by existing administrative boundaries.
- 3.2.2 The requirement to encompass the entire extent of the administrative boundary of each ‘Unitary or County’ authority will reduce the potential for local transport authorities to realise the potential of creating a PTA that meets identified local needs.

- 3.2.3 The draft Bill promotes the work of Solent Transport in South Hampshire as an exemplar of effective collaboration. However, the proposals in the draft Bill would preclude these local authorities from putting forward Solent Transport as a potential PTA.
- 3.2.4 **We recommend that the draft Bill allows local transport authorities to put forward proposals for a new PTA on the basis of the most appropriate boundary for the area concerned. We further recommend that the requirement for a new PTA to encompass the full extent of current administrative geographies is deleted.** Furthermore, we suggest that the Regional Planning Body (the Regional Assembly) is a consultee in respect of any proposal to establish a PTA in the region. We are also unclear as to the way in which PTA will be funded, and importantly if there will be processes that allow additional funding to be captured. This latter approach could encourage authorities to consider promoting a PTA in there area.
- 3.3 Road user charging
- 3.3.1 **We remain of the view that without national leadership, any proposal to assist the implementation of road user charging will be unsuccessful.** While we agree that the draft Bill would facilitate greater account being taken of local circumstances in the development of a proposal, it fails to acknowledge that those affected by road charging schemes are not limited to the administrative boundary of the proposing authority. Furthermore, the draft Bill fails to acknowledge that the major issue to implementing road user charging is public acceptability, rather than legislative framework.

**South East England Regional Assembly  
25 July 2007**

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