

The regulation of bus and coach services in Scotland

Overview of the regulatory framework

1. The regulatory framework underpinning the Scottish bus and coach industry is the result of deregulation and privatization, local government reorganization, and devolution. Table 1 shows the key legislation which has resulted in today's complex organizational landscape:

TABLE 1 Key legislations affecting the Scottish bus and coach industry

<i>Legislation</i>	<i>Key relevant provisions</i>
Transport Act 1968	<ul style="list-style-type: none"> • Set up the seven Passenger Transport Authorities (PTAs), including Strathclyde, which are responsible for setting out a local authority's transport policy and public transport expenditure plans. • Implementation of the plans is carried out by the Passenger Transport Executives (PTEs).
Transport Act 1980	<ul style="list-style-type: none"> • Removed the requirement for a licence for each vehicle, and replaced it with a requirement to apply to the Traffic Commissioner for a single Public Service Vehicle (PSV) operator's licence. • Removed some restrictions on the provision of long-distance express services.
Transport Act 1985	<ul style="list-style-type: none"> • Obligated local authorities and PTAs to transfer bus operations into companies operating at arm's length. • Changed the basis on which local authorities could subsidize services. • Gave powers to local authorities to run concession travel schemes. • Established the system of bus registration.
Public Service Vehicles (Registration of Local Services) Regulations 1986	<ul style="list-style-type: none"> • Defined the length of the notice and level of information to be given to the Traffic Commissioner.
Travel Concession Schemes Regulations 1986	<ul style="list-style-type: none"> • Established that the objective of the reimbursement mechanism was that operators are no better and no worse off as a result of their participation in local authorities travel concession schemes.
Transport (Scotland) Act 1989	<ul style="list-style-type: none"> • Provided for the disposal of the Scottish Bus Group.
Transport Scotland Act 2001	<ul style="list-style-type: none"> • Introduced powers to allow local authorities to develop quality partnerships for bus services or to tender services through quality contracts. • Contained powers to enable authorities to enhance frequencies. • Created the Bus User Complaints Tribunal. • Provisions relating to concession travel schemes and multi-operator ticketing.
Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001	<ul style="list-style-type: none"> • Placed additional requirements on bus operators: <ul style="list-style-type: none"> - Notification to the relevant local authority 14 days before notifying the Traffic Commissioner. - Registration period increased from 42 to 56 days. - Public to receive at least 21 days' notice of cancelled or varied services. - Traffic Commissioner given powers to standardize service registration requirements. - '5-minute rule' which allowed for bus services to run up to 5 minutes either side of the publicised timetable removed.

Local Government in Scotland Act 2003	<ul style="list-style-type: none"> • Repealed the sections of the 1985 Act relating to subsidized bus services in Scotland and replaced the 'de minimis' rule by a 'best value' requirement.
Transport Scotland Act 2005	<ul style="list-style-type: none"> • Allowed Scottish Ministers to make national travel concession schemes. • Established the National Transport Agency and seven statutory regional transport partnerships responsible for drawing up regional strategies. • Transferred SPT's powers to the West of Scotland Partnership (with the exception of powers relating to rail which were transferred to the National Transport Agency*). • Extended the remit of the Bus User Complaints Tribunal to coaches.
The National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Order 2006	<ul style="list-style-type: none"> • Established the first national scheme, which began on 1st April 2006. • Scheme applies to bus and coaches. • Operators may seek to withdraw from the scheme, with 56 days' notice to Scottish Ministers. • Participation can be made compulsory or operator can be excluded from the scheme by the Scottish Ministers. • The objective of the reimbursement mechanism is that operators should be financially no better and no worse off as a result of their participation in the Scheme. • Reimbursement to operators within a capped level of funding. • Disputes between the Scottish Executive and operators relating to the value of the fare to be determined by an assessment panel.

Source: CC.

*Named Transport Scotland.

2. Although local authorities were not compelled to sell their bus operations, nearly all have been privatized. A notable exception is Lothian Buses, which remains in public ownership and operates as an 'arm's length' company, and whose shareholders are the City of Edinburgh Council, Midlothian Council, West Lothian Council and East Lothian Council. Nearly 82 per cent¹ of services in Scotland on a mileage basis are provided on a commercial basis.
3. Key bus industry stakeholders include:²
 - (a) Scottish Executive's Transport Group sets the national policy framework on buses; provides substantial funding direct to bus operators through the Bus Service Operator Grant (see below) and provides funds to local transport authorities in support of bus services (via the Bus Route Development Fund and Transport Grant Aided Expenditure).
 - (b) Transport Scotland: the executive agency of the Scottish Executive responsible for driving delivery of the Scottish Executive's capital investment programme for transport; oversees the operation and maintenance of the national rail and trunk road network; it also runs the national concessionary travel schemes, promotes integrated ticketing; supports the provision of impartial national travel information services.
 - (c) Regional Transport Partnerships: groupings of local authorities responsible for drawing up regional transport strategies, which provide a framework for the transport activities of the constituent councils. Some have adopted minimal powers. Others have adopted a wider range of powers including, in three cases, taking powers in relation to buses from local authorities.

¹Bus Industry Monitor 2005, Figure D p17.

²Some of the participants also have responsibilities relating to rail. These are described in Appendix D.

- (d) Local Transport Authorities are responsible for ensuring that bus services in their area meet local needs,³ working in partnership with bus operators to deliver high quality bus services. They have a duty to intervene in the marketplace to identify and subsidize socially necessary services. Through more general transport policies, such as congestion charging or charges for parking, they influence the level of demand for public transport, including buses.
- (e) Bus operators: provide services, either commercially or under contracts with local authorities.
- (f) Traffic Commissioners: responsibilities include: licensing of bus and coach operators; disciplinary action, where appropriate, against drivers of passenger carrying vehicles; registration of local bus services.
- (g) Bus or coach users: pay fares to the bus or coach operators or travel freely when entitled to concessionary fares.
- (h) Bus Users Complaints Tribunal: has power to determine complaints about the operation of registered local bus and scheduled express and long-distance coach services.

Registration and monitoring of bus services

4. A bus or coach operator is required to register a new local bus service⁴ and to obtain a Public Service Vehicle operator's licence from the Traffic Commissioner for each area in which it has an operating centre. The Traffic Commissioner for the Scottish Traffic Area is appointed by a panel, including the Scottish Executive.
5. To be granted a licence by the Traffic Commissioner, bus and coach operators must:
 - (a) satisfy a good repute requirement;
 - (b) demonstrate appropriate financial standing;
 - (c) employ at least one professionally competent transport manager;
 - (d) have adequate arrangements to maintain its number of buses in a fit and serviceable condition and have proper operating centre(s);
 - (e) meet service quality standards for registered local services;
 - (f) comply with the laws relating to driving and operating the vehicles used under the licence (including speed limits and insurance);
 - (g) ensure that the rules on drivers' hours and tachographs are observed; and
 - (h) ensure that vehicles do not carry more than the permitted number of passengers.
6. An operator's licence authorizes the number of buses that it may use for all types of operation and is open-ended subject to the payment of annual or five-yearly fees. A variation application must be made if the operator wants to operate more buses.

³Except where their powers have been transferred to Regional Transport Partnerships.

⁴'Local service' is defined in the 1985 Act: broadly, it is a bus service operated at separate fares where the distance between stopping places or overall journey length is less than 15 miles (as the crow flies).

7. Operators are generally free to decide what frequency of service to offer and are also free to determine their fares, unless they are operating a service under tender to a local authority. Operators may also vary the registration freely after giving sufficient notice. Stagecoach told us that even though there is no regulatory requirement, it would also give appropriate notice of changes to fares and other aspects of services.
8. To register, vary or cancel a local bus service, the bus operator must give 14 days' notice to the relevant local authority, followed by 56 days' notice to the Traffic Commissioner. If a local bus service is cancelled or altered, the operator must give 21 days' public notice of the change by displaying a notice in each bus concerned. Any subsequent variation or withdrawal of the service also requires these periods of notice. A total of 70 days' notice is thus needed to start or change a local bus service. Stagecoach told us that timetable changes might occasionally happen more quickly, if there was local authority support for an early start date, which in practice usually only happened in relation to tendered services. Other than in extraordinary circumstances, new local bus routes must be run for at least 90 days before they can be cancelled or changed. The Traffic Commissioner publishes details of local bus service registrations fortnightly.
9. There is no need for any 'approval' but the operator needs to provide the Traffic Commissioner and the local authorities with information about each proposed route, including its starting and finishing points, a map, the timetable (or a statement that the service interval is 10 minutes or less) and stopping arrangements. The operator is free to vary the service in two ways without further reference to the Traffic Commissioner:
 - (a) if demand is unusually high, additional 'duplicate' buses may be run as closely as possible to the registered times; and
 - (b) as the registration of a 'frequent service' (one with frequency of at least one bus every 10 minutes) does not oblige the operator to specify a timetable, it can alter timings on these services provided that it operates within the frequency requirement.
10. The Traffic Commissioner can attach conditions to the operator's licence if, for example, it fails to run its services as registered, interferes with another operator's services, or operates dangerously. The conditions may ban the operator from operating on certain routes, or even from providing local bus services at all. The Traffic Commissioner may also limit the length of the licence period. The Traffic Commissioner may also determine 'traffic regulation conditions' at the request of a local authority. Such conditions may be used to prevent dangerous traffic conditions or reduce severe traffic congestion. The few traffic regulation conditions that have been made normally regulate the amount of time that buses can wait at designated bus stops in areas where local authorities are concerned about road safety or congestion and there is substantial competition between operators. Under the 2001 Act, noise and air pollution were added to the reasons for which a traffic regulation condition may be made. If asked to do so by the relevant local traffic authority and she is satisfied that it is necessary, the Traffic Commissioner may regulate the number of buses operating on a particular route. The Commissioner has no other powers to control or veto properly completed applications for registration.
11. The Vehicle Operating Service Agency, along with the Traffic Commissioner's office, regulate operators' compliance with their operating licences, the roadworthiness of buses and, by investigating passenger complaints, the reliability and punctuality of services against their registered timetable.

Local authority contracts

12. Provisions in the Local Government in Scotland Act 2003 let local authorities and PTEs decide whether and when to put supported services out to tender. Local authorities that wish to subsidize local bus services must adhere to the principles of best value.⁵ Tenders in excess of EC financial limits must be subject to open competitive tendering. Payments can be made to provide additional frequency on a commercially registered service or to change its route.
13. There are two main types of contract for tendered services:
 - (a) cost: the local authority receives the revenue and the contractor tenders for the whole of the cost of operating the contract; and
 - (b) subsidy: the operator retains the revenue and tenders for the cost of operating the service less the estimated revenue.
14. The contract usually specifies the details of the service, including type of buses, route, and timetable, and may specify the fares (or a range of fares). Most contracts include clauses allowing them to be suspended if another operator decides to register the service commercially.
15. [X] Another Council (Angus) told us that its priorities and budgets are focused on local bus networks, not coach services (but noted that it had continued to express concern and disappointment at the progressive reductions since 2000 in stopping coach services within Angus on both the A90(T) and A92 corridors). However, [X].

Concessionary travel

Local schemes

16. For many years local authorities have provided concessionary fares for elderly and disabled people using discretionary powers. Under the 1985 Act, operators are compensated on the basis of foregone revenue. Concessionary fare schemes must be open to all operators of local bus services and local authorities may compel operators to join a scheme. It should be an 'objective (but not a duty) of a local authority' to reimburse operators so that they are financially neither better nor worse off through participating in any scheme.⁶ The wording means that authorities have some latitude in the precision of the calculation.
17. The methodology used to calculate the reimbursement level to operators is usually based on the 'generation factor', ie the percentage increase in base (no scheme) travel by users of the scheme.⁷ The reimbursement formula translates raw usage data, through application of the generation factor, into the appropriate amounts for payment to operators.
18. The 2001 Act gave Scottish Ministers the power to require local authorities to provide a minimum level of travel concessions for eligible people. Prior to 1 April 2006, there

⁵This replaces the provisions of the 1985 Transport Act, which allowed for the award of contracts (without tender) on de-minimis basis up to £12,000 a year per contract up to a threshold of a total value of £70,000 a year per operator. No specific guidance on the operation of best value as appropriate to local bus provision has been issued by the Scottish Executive.

⁶Travel Concession Schemes Regulations 1986.

⁷If 100 people travelled in the absence of a scheme, and the generation factor were 20 per cent, then 120 journeys would be made when the scheme was operational. The generation factor provides a proxy for elasticity levels.

were 16 local concessionary travel schemes across Scotland, some of which served more than one local authority area.

19. All local authorities in Scotland voluntarily provided the Scottish Executive's national minimum standard of free local off-peak bus travel for people aged 60 and over and for the disabled. Many schemes allowed free or discounted travel beyond the concession scheme boundaries or had a lesser, or no, time restriction. For example, the Highland scheme was free at all times and included half fare cross-boundary travel to Aberdeen, Glasgow and Edinburgh, including concessions on unregistered coach services. Certain local authority schemes also included subsidized rail travel (eg Strathclyde).

National concession scheme

20. The 2005 Act enables the Scottish Ministers, by order, to make national concessionary travel schemes. The schemes may be new or they may modify or revoke existing local authority concessionary schemes established under section 93 of the Transport Act 1985.
21. A national scheme must include the following elements: the rate of the concession; when the concession is available; the right of operators to take part in the scheme and the corresponding right of the Scottish Ministers to require them to take part; payments to operators for providing concessions; the enforcement of participation by operators in the scheme; and appeals against compulsory participation.
22. It is a criminal offence punishable by a fine not exceeding £1,000 if an operator fails to comply with an obligation imposed under a scheme.
23. A new scheme made under these provisions, was launched on 1 April 2006. It allows older and disabled people to travel free by bus anywhere in Scotland on local buses and long-distance scheduled coaches throughout the day, including the morning rush hour. The launch of a similar scheme aimed at young people is planned for 2007.
24. The Scottish Executive agreed with the Confederation of Passenger Transport UK (CPT) a number of principles regarding the reimbursement mechanism, including a single reimbursement rate of 73.6 per cent for all average adult single fares for all operators and a cap on overall payment for all operators.⁸
25. The scheme will use Smartcard technology, which may improve the accuracy of the reimbursement mechanism.
26. It is still too early to be able to assess the impact of the Scheme on the coach market and we received mixed views from parties. In the course of this inquiry, we were told that:
 - (a) The scheme might result in an increase in demand for coach services, possibly to a greater extent than local bus services, which already benefit from free local concessionary schemes. Some parties, however, were doubtful that the increase in passenger numbers would be significant due to the pre-existence of the local schemes ([§<]) and the relatively small proportion of total passengers who are entitled to benefits under the scheme. One party argued that the scheme had already had the effect of increasing off-peak demand. The Scottish Executive told us that while in early April there were indications that the take-up rate was

⁸See: www.transportscotland.gov.uk/defaultpage1221cde0.aspx?pageID=40.

lower than anticipated, the take-up rate by late May was up to and possibly slightly beyond what applied under the old local schemes.

- (b) The scheme might result in distortion of competition, although the extent to which this is actually the case is unclear. One party ([redacted]) raised concern at the scheme created potential for the joint venture to increase adult fares on routes where there are large numbers of concessionary travellers. According to this party, this could have an adverse effect on the revenue cap in place within the Scotland-wide concessionary scheme. This could in turn have an effect on local bus market income. Others reported the creation of new services, some of which provided the opportunity for concession pass holders to make additional day-trips. The Scottish Executive told us that Transport Scotland would be able to intervene if there was any indication that operators distorted fare levels as a result of the scheme.

Bus service operators grant

27. Originally called the Fuel Duty Rebate when it was introduced in 1965, the Bus Service Operators Grant (BSOG) is designed to protect bus operators from rising fuel taxation, and assist with keeping fares down. It reimburses most of the fuel duty (all for new cleaner fuels) paid by the operators of registered services.
28. [redacted] told us that it believed that some coach services were converted into registered bus services by adding stops purely for the purpose of obtaining a reimbursement of the fuel duty. The Scottish Executive told us that such practices would be illegal.
29. Scottish Citylink receives BSOG payments for the registered sections of its services. Megabus does not qualify for BSOG.

Bus Users Complaints Tribunal

30. Regulations made under the 2001 Act established a bus user complaints tribunal (a non-departmental public body) to consider written complaints by bus users that had not been satisfactorily dealt with by bus operators. The powers of the tribunal are set out in the Bus User Complaints Tribunal Regulations 2002.⁹ These enable the tribunal to 'determine complaints' and, on making a determination, require the bus operator to pay reasonable compensation to the complainant for the actual loss incurred. Section 50 of the Transport (Scotland) Act 2005 extended the remit of the BUCT so as to include scheduled services such as Express and long-distance coach services.
31. BUCT is not able to determine complaints about certain matters including:
- (a) the level of fares charged;
 - (b) the frequency and routing of a service;
 - (c) the type of vehicles or facilities provided;
 - (d) the conditions attached to concessionary fares; and
 - (e) matters being pursued on a legal or insurance basis.

⁹The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001 No 319) ('the block exemption').

The block exemption

32. Chapter I of the Competition Act 1998 prohibits ‘agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (or a part thereof) and which may affect trade within the United Kingdom’, and as such would normally prevent operators from agreeing joint ticketing arrangements.
33. In 2001 the Secretary of State by order created a block exemption from the provisions of Chapter 1 of the Competition Act for multi-operator ticketing schemes.¹⁰ Amendments to this came into effect in 2006 and the exemption is valid until 28 February 2011.
34. The block exemption order covers certain types of multi-operator travelcards, through tickets, multi-operator individual tickets, short-distance add-ons and long-distance add-ons.
35. To qualify for exemption a scheme has to satisfy certain criteria.¹¹ In particular, to qualify for exemption, a scheme must not:
 - (a) exclude any operator without ‘objective, transparent and non-discriminatory reasons’;
 - (b) limit the variety or number of routes offered by individual operators;
 - (c) limit the price or availability of any single-operator ticket;
 - (d) limit the frequency or timing of any service, except where indispensable to the scheme for the purpose of onward travel connections;
 - (e) facilitate the exchange of commercially sensitive information between parties, except where this is directly related and indispensable to the scheme and carried out on an objective, transparent and non-discriminatory basis;
 - (f) allow for the distribution of revenue from a multi-operator travelcard scheme by any method which would provide operators with an incentive to set their own fares higher than they would have been in the absence of the multi-operator travelcard scheme, or significantly reduce the incentive for each operator to compete for passengers;
 - (g) allow price fixing for tickets, except that an agreed price is allowed for multi-operator travel cards (although posted prices are allowed for through tickets and ‘add-ons’); and
 - (h) in relation to multi-operator individual tickets, allow for the distribution of revenue other than on the basis that it ‘lies where it falls’.

¹⁰The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001 No 319) (‘the block exemption’).

¹¹Different requirements must be satisfied for each type of ticketing arrangement. For more information, see OFT439: Public transport ticketing schemes block exemption and the OFT Consultation on its Draft Guideline: Public Transport Ticketing Schemes Block Exemption—Consultation on the text of a guideline under section 52 of the Competition Act 1998—May 2006: www.of.gov.uk/NR/rdonlyres/8467CE9D-C1E6-4F70-A06A-9EA1C9190A46/0/oft439con.pdf.