

CONSULTATION ON DRAFT REGULATORY REFORM (PUBLIC SERVICE VEHICLES) ORDER 2005

Introduction

pteg represents the seven Passenger Transport Executives (PTEs) of England and Scotland which between them serve more than thirteen million people in Strathclyde ('SPT'), Tyne and Wear ('Nexus'), West Yorkshire ('Metro'), South Yorkshire, Greater Manchester, Merseyside ('Merseytravel') and the West Midlands ('Centro'). Transport for London (TfL) is an associate member of **pteg**. The PTEs plan, procure, provide and promote public transport in some of Britain's city regions with the aim of providing integrated public transport networks accessible to all. The PTEs have a combined budget of more than a billion pounds a year, and are funded by a combination of local council tax and grants from national government. They are responsible to Passenger Transport Authorities (PTAs), made up of representatives of local councils in the areas they serve.

All PTEs are keen to see this Order finalised so they can use the new powers they would acquire as regards bus purchase. The absence of such powers has caused sub-optimal solutions to be adopted in the context of schemes that had the full support of central Government and other stakeholders. **pteg** would therefore want to make clear that, whilst we believe that the comments in this consultation response would improve the Order, we are not seeking to delay its introduction through making changes. Were it to be passed in its current form, the Order marks a significant step forward, even though we would also view it as something of a missed opportunity.

Background

The Transport Act 1985 had, as one of its principal objectives the privatisation of the bus industry. Once this had been achieved, PTEs were to lose the powers contained in the Transport Act 1968 section 10(1)(i) and (viii) to carry passengers by road and to let passenger vehicles on hire. Similar Statutory Instruments were made in late 1986 removing these powers from all PTEs.

Counsel has advised at least one PTE that a Court would probably conclude that it had lost the power to buy buses for public transport use even if that use was to be made by bus operators and not by the PTE directly. Counsel also concluded that with the exception of Section 106 of the 1985 Act (capital grants to facilitate travel by the disabled), the Executive has no powers to make grants to bus operators for the bus operator to acquire buses as consideration for providing services.

Draft Regulatory Reform Order process

The draft Order refers to 4 areas:-

- school transport in respect of removing the requirements to register school transport services carrying pupils/students (but not the general public) as fare paying passengers with the Traffic Commissioner;
- bus subsidy contracts, extending the maximum length of a contract from 5 years to 8 years;
- leasing of buses by PTEs, to provide PTEs with the power to let vehicles to operators for tendered services under the 1985 Act;
- Councillor director dispensations.

We are content for the first and last of these changes to proceed in their current form, but do have views we would wish to have taken into account as regards the second and third areas where changes are proposed.

We have fought for a number of years to bring about changes as regards our lack of powers to lease vehicles to operators. We are very keen to have these powers restored and would want to see the Order being implemented without further delay. The views set out below should therefore be read in terms of improvements that could be made to an important change. We recognise that the RRO process moves forward largely through consensus, and would not wish our comments to be interpreted as opposition to the current process. However, in some areas, we feel that opportunities are being missed and that the proposed changes do not address the full range of issues that are required to further the principles of Best Value.

Bus Subsidy Contracts

We consider that the new year maximum contract period should also include Quality Contract schemes as the rationale/justification for doing so is the same i.e. bus operator investment, value for money. The consultation document is quite explicit in excluding QCs from this legislative change and would probably be quite a hurdle to overcome. An eight maximum contract would also mesh well with the 10 year period allowed for a quality contract scheme. Since the timing of the Scheme runs from the date on which the Scheme is made by the relevant PTA (this date could precede the first date on which the new contract(s) came into being by a year or more), the current five year limitation means that:

- two shortened periods of contract are adopted (circa 4½ years), which will tend to drive costs higher; or
- a five year contract followed by a shorter contract period to take the combined contracts plus initial lead in time up to 10 years, which will have a similar effect; or
- the scheme is renewed after the initial five year contract.

We do not regard any of these solutions as being optimal, and an extension of the maximum contract period to eight years would enable a single contract to match well with the period of validity of the scheme. It would also enable a shorter initial period (say five or six years) to be used with the potential to extend up to a maximum period of eight years should the contractor deliver an effective service in line with the agreed specification. We understand this device is increasing being used by TfL to deliver good value for money, both increasing incentives to operators to deliver and reducing the cost of procurement.

In addition, there is a technical point to raise as to when the 8 year period runs from. It should be from the commencement of the contracted services but the legislation (section 90(1)) is not entirely clear on this.

Leasing of Buses by PTEs

The draft RRO removes the restriction on the powers of PTEs which prevents them from buying buses to let for hire to operators.

The RRO amends the Transport Act 1968 by amending the wording of section 10(1)(viii) to make it clear that the PTEs power is only to let passenger vehicles on hire in connection with an agreement providing for service subsidies entered into under section 9A(4) of the 1968 Act.

There are six issues arising in relation to this proposal:-

(1) Community Transport Operators

“Agreements providing for service subsidies” are defined in section 63(10)(b) of the 1985 Act as “... agreements under which any person undertakes to provide a public passenger transport service of any description on terms which include provision for the making of payments to that person by the Executive”. “Public passenger transport services” are defined as “services on which members of the public rely on for getting from place to place, when not relying on private facilities of their own, including school transport but not

- (i) services provided under permits under section 19 of this Act, other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled;
- (ii) excursions or tours”.

Looking at the amendment to the wording of section 10(1)(viii) then it would still not permit PTEs to acquire buses for use by community transport operators who operate under Section 19 or Section 22 permits as neither of these relate to agreements under section 9A(4) of the 1968 Act i.e. tendered services.

(2) Quality Contracts

It also appears that the amendment would not allow PTEs to acquire and let vehicles on hire for the purposes of a quality contract scheme under section 124 of the Transport Act 2000. In respect of Quality Contracts this is thought to be highly desirable and may be a method of ensuring good competition by removing some barriers to entry into the market. Discussions by several PTE with potential new entrants has identified vehicle availability as an issue.

(3) Grant making powers

- (a) Additionally, the RRO could be an opportunity to amend section 106 of the Transport Act 1985 to widen the grant making power beyond the purpose of facilitating travel by members of the public who are disabled, to include a wider social inclusion agenda to reflect the business of the community transport operators. The power could be widened to include other groups and perhaps the list utilised for the purpose of Concessionary Fares would be a good starting point, however it would be far better if the grant making power extended to making grants for the purpose of the provision of public transport generally,
- (b) Also the new section 10(1)(viii) could include grant making powers for tendered services under the 1985 Act tendering regime. It may be that giving a grant for the operator to acquire a vehicle may offer better value than providing a vehicle. It seems that section 10(1)(viii) could relate to providing the vehicle or a grant to acquire the vehicle.

(4) "On hire"

A further issue that needs to be clarified or understood relates to reference to "to let passenger vehicles on hire ..."

The likely scenario is that the PTE would provide the vehicle to the successful operator in return for a lower service subsidy payment. If a "rent" was charged then this would merely have the effect of increasing the service subsidy. It could therefore be argued that allowing the operator to utilise a vehicle in return for a lower service subsidy complies with the wording of the proposed section 10(1)(viii). The wording could be amended to state "to provide passenger vehicles, with or without trailers" This would put the matter beyond doubt.

(5) Technical drafting

Paragraph 2(3) of the RRO relates to amending sections 60(5) and (7) of the 1985 Act by removing reference to section 10(1)(viii) and removing the words "and to let passenger vehicles on hire with or without trailers for the carriage of goods". The effect of these amendments is that any Order as made under section 60(5) should only relate to section 10(1)(i) of the 1968 Act and not (viii) of the 1968 Act. One technical drafting issue is that the RRO only relates to amending the Act, and not the Orders which are already made. As the Order has already been made, does this still have effect in respect of paragraph (viii)? This needs to be considered to ensure the RRO is effective.

(6) Purpose of Providing Vehicles

Concern has been expressed that the use of the words "in connection with" in the proposed wording for section 10(1)(viii) could mean that any vehicle supplied can only be used for the purpose of the provision of the services covered by the service subsidy agreement. This could be quite restrictive in that it may be that the vehicle could be used for providing other services as well. The vehicle might not be deployed full time in providing the tendered services. Perhaps the wording of 10(1)(viii) could be amended to say that the primary purpose has to relate to the services under the service subsidy agreement. This would then allow ancillary use.

We trust these comments are helpful in refining the drafting of the Order and look forward to PTE powers to lease buses being restored at the earliest opportunity.

31 March 2005