

# THE LOCAL TRANSPORT ACT 2008 - AN EFFECTIVE TOOL FOR RURAL AREAS?

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## 1. INTRODUCTION

### 1.1 Context

Transport is a key concern when looking to achieve vibrant and sustainable communities. It is paramount that transport services are responsive to the needs of people in rural areas, where physical isolation and a lack of affordable, accessible transport can aggravate other causes of social exclusion and lead to real hardship.

The provision of good transport links form an important part in this role, helping to reduce social exclusion for residents by providing access to employment, leisure, training, education and health facilities, and helping visitors to access the countryside.

The Local Transport Act 2008 aims to improve the quality of local transport schemes with particular regard to improving bus services and reviewing arrangements for local transport governance.

This paper seeks to determine what the key strengths of the Act are in relation to rural public transport and whether the Act has gone far enough to address rural transport issues. The paper is based upon a 'thinkpiece' commissioned in 2009 by the Commission for Rural Communities. As part of this research paper, consultation was undertaken with a number of rural authorities.

## 2. WHAT CHANGES ARE PROPOSED IN THE ACT?

### 2.1 Local Transport Plans and Policies

The 2000 Transport Act introduced a requirement for local transport authorities to produce Local Transport Plans (LTPs) every five years. The LTA 2008 expands on the requirement of local authorities to develop LTPs. LTPs should include policies as well as implementation plans but do not have to be replaced every five years. The LTA 2008 also removes the requirement for local transport authorities to prepare a separate bus strategy and amends an existing duty relating to the needs of persons who are elderly or have mobility problems so that it also applies to the needs of disabled persons.

In future LTPs must cover all aspects of transport, rather than the currently more limited requirement relating only to transport facilities and services, and must take the protection and improvement of the environment into account.

In the six metropolitan counties (ITA/PTE areas), the duty to produce an LTP will lie solely with the Integrated Transport Authority, rather than shared between district councils (further information on ITAs is detailed in subsequent sections).

## **2.2 Integrated Transport Authorities (ITAs)**

On the 9<sup>th</sup> February 2009, under the LTA 2008, the six English Passenger Transport Authorities became Integrated Transport Authorities (ITAs). As detailed above, the ITAs now have full responsibility for local transport plans covering their area. These ITAs are designed to allow for better coordination across whole areas of road networks and public transport services. As part of this change, the ITAs will have to look at the needs of their areas as a whole, including the road network.

The Act has given new powers to ITAs. In the future, ITAs will be able to do anything that might improve the 'social, economic, environmental wellbeing' of an area unless there is a specific law which states that they cannot.

The 2008 Act also makes provision to allow for new ITAs to be established. This can only happen if it consists of the whole of two or more counties or districts and is likely to improve the effectiveness and efficiency of transport within that area.

Under the Act strategic road and rail powers can be delegated by the Government to an ITA. Local highway powers (e.g. bus lanes, traffic calming, maintenance) can also be transferred to an ITA.

## **2.3 Local Bus Services**

### Quality Partnership Schemes (QPS)

The concept of a QPS was introduced in the Transport Act 2000. Under a QPS agreement, local transport authorities agree to invest in improved facilities along a particular route and operators using those improved facilities undertake to provide services of a particular standard in relation to operations of local bus services. Under the new Act, QPSs have been reformed so as to enable local authorities to specify minimum frequencies, timings and maximum fares as part of the specific standards set out. Alongside this, there are also new measures to prevent schemes being undermined by disruptive competition from non-partnership operators through what are termed "registration restrictions" in the legislation. This prevents other, poorer quality services from ruining the success of a scheme. The restrictions will have to be accepted by the traffic commissioner. There are a number of QPS schemes in operation, primarily in urban areas.

This provision came into force on April 6<sup>th</sup> 2009.

### Quality Contract Schemes (QCS)

A QCS is a contract where the local authority grants exclusive rights to one operator to run services within an area, following a competitive tendering process. When determining a QCS, local authorities must ensure that the QCS is the “only practicable way” of implementing the policies set out in their bus strategy. The concept originated in the Transport Act 2000 but there have been no schemes implemented to date in England. A scheme must aim to increase use of local bus services and increase the quality of the services.

Quality Contract Schemes (QCS) under the new act now have a new public interest criterion to replace the previous “only practicable way” test and remove the need for approval by the Secretary of State. It essentially allows for franchising of bus services and is no longer seen as a mechanism of “last resort”, to be implemented when relationships between the local authority and operator(s) have broken down.

### Voluntary Partnership Agreements (VPAs)

VPAs are voluntary agreements between either a single transport authority or two or more transport authorities and one or more local transport operators in order to provide facilities and services of a certain standard. Derived from the Transport Act 2000, there are currently many VPAs in place. They have tended to be implemented on a corridor basis, rather than throughout a geographical area.

The Act has introduced a statutory definition of a VPA, coming into effect on 9<sup>th</sup> February 2009. The Act seeks to remove the key risks previously perceived to arise regarding competition law giving local authorities a role in determining where co-operation between operators is in the public interest.

Unlike a QPS, there is no mechanism preventing non participating operators from using any improved facilities.

## **2.4 Provisions relating to Passenger Transport**

### Use of taxis and hire cars to provide local services

The Transport Act 1985 (Section 12)<sup>1</sup> made a provision for holders of a hackney carriage licence to be able to operate their vehicle as a bus along a specified registered route with separate fares.

The Local Transport Act 2008 amends this previous legislation by allowing private hire vehicle owners to use their vehicle to operate registered local bus services. Private hire vehicle owners would be required to apply for a special PSV operator's licence issued by the Traffic Commissioner, which in turn enables them to register and operate local bus services.

### Vehicles used under permits

The LTA 2008 makes a number of provisions regarding the community transport sector.

Under Section 19 of the 1985 Act states that non-profit making community groups are able to operate local bus services for a particular social or community group but not for the general public. Using vehicles of between 9 and 16 seats, community groups are able to apply to the Traffic Commissioner for a section 19 permit negating the requirement for groups to have an operators licence. Under the 1985 Act, these permits are not subject to an expiry date.

Under the LTA 2008, vehicles of less than 9 seats (i.e. cars and MPVs) will be able to carry passengers under s.19 permit at separate fares.

Under s.22 of the 1985 Act, non profit making organisations are able to operate locally registered bus services without the need for an operator's licence. The services may be operated using a vehicle of between 9 and 16 seats on a voluntary non-profit basis (i.e. drivers must act in a voluntary capacity). The LTA 2008 amends this provision. Under the new Act, community groups are able to employ and pay drivers and use larger vehicles

### Subsidised services

Under the Transport Act 1985, local authorities have the power to subsidise bus services in areas or at times where commercial services are not viable. At present, the power to let subsidy contracts only applies where there is no commercial provision. The LTA 2008 allows subsidised services to be awarded where services are not provided to standards that the authority determine relating to frequency or timings of services, the days of operation or the standard of vehicles used.

The LTA 2008 amends the previous Act by increasing the length of time an authority can issue a contract for a subsidised service to 8 years.

## **3. WHAT DO THESE CHANGES MEAN FOR RURAL TRANSPORT PROVISION?**

### **3.1 Local Bus Policies**

Research undertaken by the 'Campaign for Better Transport' identified that buses are of vital importance in rural areas.<sup>2</sup> The paper states that they are an essential tool in combating social exclusion, they can contribute to vibrant rural economies and they can help to combat the significant rise in rural traffic.

The report also recognises that the viability of rural bus services is fragile and increasingly local authorities have to provide financial support to an expanding number of services.

The LTA 2008 offers local authorities a selection of tools to enable them to have more influence and control over the local bus network, in particular encouraging network planning. The latter has been lacking since the 1985 Act and has been a source of concern to users who would welcome a more integrated system. The LTA 2008 allows for rural authorities to select the relevant provisions that could address specific issues within their area.

The DfT suggests that significant improvements to services in rural areas can be achieved through rural Quality Partnerships.<sup>3</sup> However it is known that this uptake is limited because operators can gain full subsidy to operate rural routes. It is felt that this may hinder the take up of this provision in rural areas.

A number of authorities have intimated that the previous arrangements have proved to be satisfactory in their particular circumstances. Some have gone down the voluntary partnership route and others have had entirely informal partnerships that have delivered significant growth and quality improvements. One is discussing with the DfT the possibility of it being a trial quality contract area (most services in the area are tendered) on a “benevolent” basis, whilst another is considering using the powers to deal with a purely urban situation.

Quality Contracts essentially allow local authorities to plan bus networks, specifying fares, frequencies, timings and routes. Bus Operators then bid to run the network and a contract is made between the operator and local authority. Although perceived as a solution for urban areas there is no reason why this can't work in rural areas. However the fear is that no local authority (rural or urban) will want to be the first to test the new provisions.

It is more likely that the amendments to voluntary partnerships will encourage a greater number of schemes in rural areas as the competition guidance has been relaxed. The inclusion of service frequency, timings and maximum fares into statutory partnerships is potentially significant. The inclusion of timetable and fares within partnership criteria is particularly significant in rural areas, as it improves the prospects of connecting services with the core routes and the possibility of through ticketing. This is especially helpful in semi-rural areas to facilitate integration with commuter routes.

Two highly rural authorities stated the need to have more influence over the network was of little relevance as the bulk of the network was tendered and therefore they already had effective control.

### **3.2 Provisions relating to Passenger Transport**

The 2008 Act makes a number of additional provisions relating to passenger transport.

#### Use of taxis and PHVs to provide local services

This provision in the Act permits private hire vehicles to operate local registered bus services. Prior to the Act, only hackney carriages were able to undertake this role.

Under the new legislation, private hire vehicle owners would be able to combine their day-to-day private hire work together with undertaking local bus services. The registered bus route would be required to have at least one stopping place within the operators licensing district. Operators would also be eligible to receive a Bus Services Operator Grant (BSOG).

This provision could be used by local authorities as a means of providing a more cost effective alternative to a conventional subsidised bus service. One local authority has intimated that they are looking to determine whether this provision could address the issues caused by the withdrawal of an inefficient conventional tendered service. However it is likely that such a service would only work outside of core school contract times as this provides the bulk of profitable work for private hire owners in rural areas.

It is more feasible that these types of services would be of greater benefit in more rural areas where there are naturally much lower passenger loadings on bus services. Whether private hire operators want to be tied to a timetabled service is yet to be determined.

The current take up of such provision by hackney carriages has been very low; however hackney carriages are typically more urban focussed whereas many small rural villages often have a local private hire operation.

#### Vehicles used under permits

Prior to the Act, services operated under a s.19 permit cannot carry the general public and s.22 services that are able to carry the general public cannot use paid drivers. The LTA 2008 will allow for existing s.19 services to be operated under s.22 permits and therefore allow the general public to be carried. This will also allow for community transport providers to tender for lucrative local authority contracts and qualify for a BSOG.

New s.22 community bus services can be set up to provide public transport for isolated rural areas (possibly at times of the day or week when large buses are uneconomical). One local authority has already signalled their intent to use the provision to extend the use of Dial & Ride vehicles to rural communities outside of Dial & Ride hours. This could equally apply to a range of rural authorities.

The ability to use larger vehicles on s.22 permits may not be of significance in rural areas due to the dispersed levels of population and the width of rural roads.

The LTA 2008 permits smaller vehicles to be utilised on s.19 services. The dispersed nature of rural areas often requires bespoke transport services for individuals. The ability to use cars and MPVs will enable more cost effective transport solutions to be developed as opposed to operating highly subsidised services using 16 seater vehicles.

#### Subsidised services

The LTA 2008 makes a provision that allows local authorities to award contracts for subsidised services for a period of eight years. Increasing this timeframe from five years will provide the opportunity for operators in rural areas to invest more in vehicles given the security of an eight year contract. This may also allow for a greater level of stability in rural subsidised networks.

### **3.3 ITA Powers**

There is now the potential for ITAs to extend their areas to encompass neighbouring rural authorities. This would allow rural areas to benefit from the more favourable concessions offered in ITA areas. This provision would be of benefit to rural authorities on the fringe of ITA areas and may only require a small boundary extension. Given that urban conurbations are typically key employment destinations, this provision would enable rural residents to travel to work more cost effectively.

Rural bus services often cross local authority boundaries and therefore require co-operation with neighbouring authorities. The provision in the Act to create/extend ITAs would make the planning of cross boundary rural transport services easier and more effective.

## **4. WHAT WILL BE THE IMPACT ON THESE CHANGES ON RURAL TRANSPORT PROVISION?**

### **4.1 Local Bus Policies**

The changes in the LTA 2008 give local authorities powers to have more control over the local bus network, more closely reflecting the position before the 1985 Transport Act came into force. There have been pressures to increase local authority powers in the context of the following:

- Intensive wasteful competition, which can ultimately lead to an overall diminution of services as the surviving operator is in a weaker financial position than before.
- Bus operators exploiting a near-monopoly position by withdrawing commercial services at short notice. Local authorities are then under pressure to financially support such services, often at high prices.

In broad terms, these problems have been more prevalent in urban areas than rural areas and much of the impetus to address such issues has come from the PTAs.

The Act widens options for exercising more local authority control over services but does not go so far as fully re-regulating services as was the situation before the 1985 Transport Act.

It has been pointed out that some deep rural authorities have small commercial networks and most services are tendered by the council, effectively giving them control.

It would appear that the additional contract powers are unlikely to have a significant impact on rural services, and that they are more appropriate in urban situations. However there is a general feeling amongst rural authorities that the previous arrangements have been quite satisfactory.

The Act does not resolve the funding issues which are seen as essential for progress. There is great concern that the economic downturn and the cost pressures facing both operators and local authorities will lead to significant reductions in rural transport.

Funding is a key issue. If local authorities are going to take a more proactive role in the operation of public transport then they will almost certainly need additional financial resources for both supporting services and providing infrastructure. Restrictions on public spending have put local authorities under huge pressure and as public transport revenue support is discretionary rather than statutory, increased expenditure is going to be very difficult to achieve. With the economic downturn, the prospects of investment from operators and alternative funding from developers and (e.g. Section 106 payments - which can be used for both capital and revenue purposes) have diminished.

In the longer term funding is a fundamental problem in the context of continued pressures on public spending and a major economic downturn and it looks unlikely to be resolved easily or quickly.

Ironically, one factor that has put additional pressure on local authority expenditure is the success of the national concessionary fares scheme, as many authorities face now significant deficits. This has directly affected a number of unitary councils and could extend to some of the seven shire councils recently moved to unitary status.

It is felt that the LTA 2008 could have gone much further in relation to coordinating the use of public expenditure in transport through the use of health, adult services and children's services transport budgets. There appears to be insufficient powers in the Act to encourage genuine innovation in the provision of services through the use of social enterprises, although the relaxations in the use of S19 and S22 permits may allow the CT sector to play a greater role.

One potential issue with greater local authority input into bus service planning is that there may be pressure, particularly from members, to address specific local problems at the expense of long term sustainability. For example, there may be requests to divert existing services to serve small communities. Whilst this may benefit a few people locally, the additional distance could reduce the attractiveness of the route as a whole to the majority of users, ultimately undermining the long term future of the service.

Network planning skills in particular are in short supply, both in bus companies and local authorities. Operators are under pressure from shareholders to keep management costs to a minimum and many local authorities have become used to being reactive rather than proactive. The latter are also under huge pressure to keep staff numbers down to reduce public expenditure.

Having had over 20 years of financial freedom, the five major bus groups that have evolved are being cautious in welcoming measures that are could undermine their positions. They are also being affected by the economic downturn and in some cases remain unhappy with the reimbursement

formulae for the concessionary fares schemes. This could affect their willingness to join partnerships.

Officers need sufficient delegated powers to be able to take a strategic view of transport and members need to understand the principles of transport and be aware of the implications of seemingly minor network changes.

### **4.3 Provisions relating to Passenger Transport**

#### Use of taxis and PHVs to provide local services

Research undertaken by CFIT<sup>4</sup> concluded that taxi based schemes in rural areas are a key part of the public transport mix in Europe but not in the UK. The research identified that there is no insurmountable regulatory or legislative obstacles to the development of similar schemes in the UK.

Research undertaken by Halcrow<sup>5</sup> on behalf of the DfT in 2003 sought to determine the reasons behind the poor take-up of taxi based transport schemes. The research highlighted a very small number of 'taxi-bus' schemes in operation.

The research suggested that the absence of innovative services is the result of a complex mix of circumstances. One of these is the lack of knowledge of the trade with regard to innovative services and the provisions of the 1985 Act. The research also suggested that moving to a more regional licensing regime may encourage more diversification in the taxi market.

The LTA 2008 makes the provision that private hire vehicles can be used to operate local bus services. In many rural authorities, private hire vehicles are the dominant force in the taxi market as hackney carriages are typically seen as predominantly 'urban creatures' that work predominantly from taxi ranks in town and city centres. Many authorities limit the number of hackneys but this does not apply to private hire vehicles, therefore they are often the dominant force in a local market. The DfT in a recent survey identified that as of 2007 there are 73,328 licensed taxis in England and Wales and 132, 505 private hire vehicles<sup>6</sup>. Therefore the provisions will effectively double the potential number of vehicles able to operate taxibus type services.

Consultation with a number of rural taxi licensing officers has brought mixed views as to this provision's potential. One officer felt that because hackney carriages have been able to make use of the provision for years, it was unlikely that private hire drivers would undertake this role given that they are predominantly owned by hackney carriage operators. However another officer felt that this provision would be a greater benefit to rural areas.

The changes brought about by the LTA 2008 have increased the potential for taxibus operation by the very nature of opening up the opportunity to both hackney and private hire vehicles owners. However, as detailed in the research there are a number of barriers associated with using taxis to promote a more flexible transport system in rural areas that aren't resolved by the provisions in the LTA 2008. These include:

- taxi operators function in a cash-based environment which may not lend itself to integrating with public transport provision;
- perception by operators that shared taxis are less profitable than current system;
- complex legislation on 'out of area' operation by taxis and PHV; and
- district licensing may prohibit growth of large scale taxi operations.

#### Vehicles used under permits

A key strength of the LTA 2008 in rural areas is the amendments to the s.19 and s.22 permits.

Research undertaken for the DfT - 'Review of voluntary Transport' identified a number of issues with the voluntary transport sector<sup>7</sup>. It was felt that the existing legislation forced schemes in either the direction of the s.19 permit or the s.22 permit. This then forced schemes into the restrictions of operating under that permit when all schemes wanted to do was meet local transport need. The LTA 2008 doesn't address the requirement of combining the two permits but it does allow transport needs to be met more effectively and efficiently.

A key benefit of the new legislation is that existing services previously operated under a s.19 permit can now be operated under a s.22 permit. This enables community transport operators to be able to provide local bus services to the general public. This will allow for community transport operators to more easily apply to undertake local authority contracted services, thereby providing community organisations with guaranteed income streams. The provision will also allow for operators to accept and receive concessionary fares payments.

The provision is thought to have the potential to be highly effective in rural areas since, under the revised s.22 permit, services can be set up to provide public transport in isolated areas using smaller, more economically efficient vehicles.

Revisions to the s.19 permit will also provide opportunities in rural areas. Consultation with the community transport sector has identified that this provision is expected to be well used. Given the dispersed nature of the rural population, it is very difficult to satisfy their transport needs using conventional services. Rural transport services are typically less cost effective than journeys made in urban areas as they are often longer and carry fewer passengers. The ability to use smaller vehicles (cars and people carriers) will enable more cost effective journeys to be made.

One of the key issues in relation to community transport is the lack of available revenue funding; a factor that the LTA 2008 fails to address. However, despite the LTA 2008 not addressing this directly, the provisions do allow community transport operators to generate their own income streams without the need for obtaining PSV licences and the cost implications of this. The cost implications associated with maintaining a fleet of minibuses may also be

reduced given that operators can now utilise smaller more fuel and cost efficient vehicles.

To ensure that these new provisions are taken up, awareness of the implications for the Act need to be disseminated to the sector.

The changes to s.19/22 regulations and the ability to have longer contract periods are likely to be more significant for rural areas than the changes to partnership/contract legislation.

### Subsidised services

The ability to extend contracts for subsidised bus services may be of benefit in rural areas as it will allow operators to invest in better vehicles and thereby seek to increase patronage levels. There is concern from local authorities as to whether they would want to tie themselves into longer contracts, given a less stable commercial network at the present time.

## **5. CONCLUSIONS**

A key strength of the LTA 2008 in rural areas is the amendments to s.19 and s.22 permits. Research and consultation identified that this provision would be most likely to have a significant positive effect upon planning and implementing rural public transport. A key benefit of the new provisions is that community transport organisations will be able to provide public transport services to the general public, rather than designing services to fit in with the relevant permit restrictions.

A criticism of the Act is that it doesn't seek to address the lack of available revenue funding for rural transport and there is still concern that a lack of funding will be a significant barrier to implementing these new provisions. However, despite the Act not addressing this directly, the provisions do allow community transport operators to generate their own income streams without the need for PSV licences. The ability to use smaller vehicles also allows for more cost effective transport to be provided.

The use of taxis and private hire vehicles to provide local services provoked mixed reviews as to their benefit to rural areas. The potential for taxibus schemes has been increased by the very nature of opening up the opportunity to both hackney and private hire vehicle owners. Some licensing officers feel that despite this change, private hire vehicle owners will not take up this provision, regardless of whether they operate in rural or urban areas, due to the very nature of the taxi and private hire trade.

One local authority has the opposite view to this and is looking to determine whether this provision could address the issues caused through the withdrawal of an inefficient conventional bus service.

Regardless of the amendments in the Act, it was generally felt that there are significant other barriers to involving the taxi trade in a cohesive rural transport network.

The LTA 2008 offers local authorities with a selection of tools to enable them to have more influence and control over the local bus network. It would appear that the additional contract powers are unlikely to have a significant impact on rural services and that they are more appropriate in urban situations. However, there is a general feeling amongst rural authorities that the previous arrangements have been quite satisfactory.

It is felt that the LTA 2008 could have gone much further in relation to coordinating the use of public expenditure in transport through the use of health, adult services and children's services transport budgets. There appears to be insufficient provision in the Act to encourage genuine innovation in the delivery of services through the use of social enterprises, although the relaxations in the use of s.19 and s.22 permits may allow the community transport sector to play a greater role.

In spite of these issues, the Act is seen as a definite step forward in seeking to secure efficient rural transport and address the needs of sustainable rural communities.

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