

Strengthening Local Delivery - Modernising the traffic commissioner system

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Part 1 – Introduction and Background

Introduction

1. The consultation paper seeks your views on proposals to clarify and strengthen the way in which traffic commissioners fulfil their statutory obligations by establishing a new Board of the Traffic Commissioners and other changes. Responses to this consultation are requested by 15th October 2007.
2. This consultation paper should be read in conjunction with the draft Local Transport Bill, published by the Department for Transport on 22 May 2007 (Cm 7043 - www.dft.gov.uk/localtransportbill). The draft Bill is about local transport matters but – partly from the initial responses to the consultation – it has become clear that changes to the way the traffic commissioners are organised nationally might be beneficial to local bus operators and local authorities in delivering the proposals in the draft Bill. By doing so, such changes would help deliver benefits to punctuality, to services and, ultimately, to passengers.
3. To that end, one of the key aims of our proposals is to give the traffic commissioners a stronger voice in securing better services. In line with this, the new Board would be a national focal point for complaints about the reliability and punctuality of local bus services, and be better equipped to investigate and follow up such complaints. At the same time, any proposals to establish a new Board would seek to ensure that the current traffic commissioner responsibilities around goods vehicle operator licensing would be at least maintained and, where possible, further enhanced.

Background

4. In December 2006 the Government published a White Paper entitled *Putting Passengers First* which set out the Government's proposals for a modernised national framework for bus services. This included a set of policy proposals designed to help improve the standard of bus services.
5. The broad thrust of these proposals were widely welcomed, including by bus operators, local authorities and passenger groups. Following further discussions with key stakeholders, the Government brought forward specific legislative proposals in the draft Local Transport Bill, published on 22 May 2007.
6. The core purpose of the draft Bill is to tackle congestion and improve public transport. It includes our detailed plans to improve the quality of local bus services, building on the proposals in *Putting Passengers First*, to reform the

way local transport is managed in our major conurbations; and to update the existing legislative provisions relating to local road pricing schemes.

7. With regards to the proposals for bus policy, the draft Bill contains a balanced package of measures, which are designed to:
 - strengthen the role of the senior traffic commissioner, by making it a statutory appointment with powers to issue directions and guidance to the other commissioners;
 - facilitate more effective partnership working between bus operators and local authorities;
 - make the implementation of quality contracts schemes a more realistic option in areas where it is in the public interest for local authorities to take greater control over bus services;
 - provide a new regime to deliver better bus punctuality, for the first time holding local authorities as well as bus operators to account for their contribution to punctuality performance; and
 - support further development of the community transport sector, by removing unnecessary restrictions and by streamlining the system for issuing permits to community transport providers.
8. We believe these proposals are well targeted, practicable and proportionate, and look forward to receiving the views of interested parties in response to the consultation.
9. The proposals in this paper are a direct follow-on from those in the draft Bill and in *Putting Passengers First* and are ultimately intended to benefit bus services and bus passengers. As noted in the consultation document on the draft Bill, we have been considering whether there are further steps we could take to ensure that the regulatory structure in place to oversee their implementation - particularly concerning the traffic commissioners and the exercise of their statutory functions - can secure better delivery of these measures whilst maintaining their key role in respect of the haulage industry. Consistency of application at a national level is essential, as is maximising the traffic commissioners' capacity to deliver on these measures. Part 2 of this paper therefore proposes measures to ensure such consistency, to better equip the traffic commissioners for their new role and safeguard their haulage-related activities.
10. As highlighted above, a key aim of these proposals is to ensure there is a nationally recognised body for people to complain to about the punctuality and reliability of their local bus services. The measures in this paper are intended to ensure that the proposed new board of traffic commissioners would be in a position to act effectively and flexibly in pursuing passengers' interests.

Part 2 – Proposals for modernising the traffic commissioner system

Traffic commissioners - current functions

11. Traffic commissioners are responsible for key aspects of the regulation of the road haulage and passenger transport industries. Although they are appointed by the Secretary of State for Transport they are office holders independent of Government, reflecting their quasi-judicial role. Their prime function is the licensing of operators of heavy goods vehicles (HGVs) and public service vehicles (PSVs). In addition, they determine, on behalf of the Secretary of State, whether drivers of HGVs and PSVs are fit persons to hold vocational driving licences and determine appeals against the impounding by the Vehicle and Operator Services Agency (VOSA) of illegally operated HGVs. They also have limited powers to ensure punctuality of local bus services through bus service registration arrangements.
12. The system is organised regionally. Each traffic commissioner is responsible for one of eight traffic areas in Great Britain - six in England and one each for Wales and Scotland. The Scottish traffic commissioner has a limited range of additional functions within Scotland. Currently one person acts as traffic commissioner for two areas (West Midlands and Wales). Each traffic commissioner is based in his or her relevant traffic area office (the offices for West Midlands and Wales are co-located). VOSA staff provide administrative support to the traffic commissioners and also issue licences in straightforward cases under delegated authority from the traffic commissioner. These staff have been based in the traffic area offices but VOSA has recently implemented a project to centralise operator licensing administration in Leeds.
13. A summary of the statutory functions and powers of the traffic commissioners can be found at **Annex A**.

Problems with the current system

14. The traffic commissioner network was originally designed for the locally-based haulage and bus markets of the 1930s. Many people are not aware of the role traffic commissioners play in securing improved punctuality and reliability. Though the traffic commissioners already have a role to play in ensuring punctual and reliable buses – a role to be strengthened under the measures in the draft Bill – people generally don't see them as the organisation which will act on their behalf on these issues. We would like to ensure that there is a recognised body to which they can complain about these things.
15. Passengers' expectations have changed and so too have those of operators. Since the 1930s local markets have evolved considerably and the industry is now dominated by large national bus operators and logistics companies who

rightly expect transparency in a national regulatory regime based on consistent standards and procedures throughout the country.

16. Under existing legislation, operators are required to hold an Operators' Licence (O-licence) in each traffic area where they have an operating centre. Whilst this imposes a significant burden on larger operators with operating centres in more than one traffic area, the Government has already announced its intention to introduce a Lead Traffic Commissioner concept to minimise burdens on multiple licence holders following the Modernising Operator Licensing consultation in December 2005. Some in the bus industry have also expressed concern about inconsistency in decision-making between different traffic commissioners though this may be more to do with administrative procedures than the decisions themselves, certainly on the bus side. Whatever the case, operators should be entitled to expect standards which are applied uniformly across the country.
17. Traffic commissioners are aware of these concerns and have worked hard to address them, under the leadership of the senior traffic commissioner. The proposal in the draft Local Transport Bill to put the position of senior traffic commissioner on a statutory footing, with a power to give general directions and guidance to the traffic commissioners should also help to address some of these problems.
18. The traffic commissioners rely heavily on the administrative support of VOSA staff to carry out their statutory functions - processing O-licence and local bus service applications, variations and cancellations and issuing special permits to voluntary bodies. Under the centralisation plans highlighted above, the bulk of VOSA staff dealing with this are now based in Leeds. Whilst this will improve consistency of decision-making, traffic commissioners have raised concerns about the degree of control they are able to exercise over their activities.
19. Traffic commissioners are currently appointed by the Secretary of State until retirement, following a recruitment exercise undertaken by officials at the Department for Transport. Whilst this system has worked well in the past, key stakeholders in the work of the traffic commissioners, such as the senior traffic commissioner, VOSA and the industry do not have any formal role or influence over the recruitment process.
20. In addition, as outlined below the proposals the Government is seeking to introduce through *Putting Passengers First* and the draft Local Transport Bill would require an expanded role for the traffic commissioners.

Delivering the Government's proposed bus measures

21. There is a question mark over the capacity of the existing traffic commissioner network to deliver the proposed new bus measures, in particular in delivering the required step change in monitoring and enforcing bus punctuality performance, given the current primary focus of their work on goods vehicles.

22. Ministers have been clear that they wish to see local authorities give greater priority to ensuring that buses are not prevented from running punctually and that local authorities should be called to give evidence where things within their control are contributing to failure.
23. Our proposals, as set out in *Putting Passengers First*, are, therefore, for a new performance regime in England and Wales which:
- ensures the traffic commissioners have access to regular, reliable data on punctuality performance;
 - enables traffic commissioners to investigate problems of reliability and punctuality, call for evidence from the local authorities and operators and require them to plan remedial measures; and
 - allows more proactive implementation by means of the current and/or new powers in relation to both operators and local authorities if performance fails to improve. This could include prohibiting any buses from the company or group which had performed badly from running on specified routes, a more flexible response than is currently available.
24. Traffic commissioners will require an administrative support system capable of delivering an improved, and more robust, method of capturing, analysing and using performance data.
25. *Putting Passengers First* and the draft Local Transport Bill include proposals for an Approvals Board chaired by a traffic commissioner (usually the senior traffic commissioner) to consider applications from local authorities in England to introduce bus quality contracts schemes. If this proposal was to be adopted, any new administrative arrangements would need to recognise this new role.
26. As outlined in our consultation paper on the draft Local Transport Bill, in developing any proposals for change we would wish to:
- ensure the continued **effective delivery of the operator licensing system across both the bus and haulage industries**, and other existing functions undertaken by the traffic commissioners;
 - **maximise the efficiency and effectiveness of the new bus punctuality performance regime**, and other relevant proposals in the draft Bill;
 - **further strengthen national consistency of standards and procedures**, so as to increase certainty for bus and goods vehicle operators;
 - **avoid unnecessary regulatory costs** for the bus and goods vehicle sectors; and
 - ensure that the **regulatory system is sufficiently flexible** to adapt in response to change, for example in the structure of the industries they serve.

27. In addition, we would wish to continue to ensure the independence of individual traffic commissioners from government in the exercise of their quasi-judicial functions, which we recognise as a key strength of the current system.
28. We also want to ensure that, for passengers, there is a recognised body to which they can address their complaints about the reliability and punctuality of their local services.

Options for reform

29. Two options to address the issues outlined above have been identified and are discussed below.

Option 1 - carrying on within current structures and plans

30. Option 1 would be to maintain more or less the current structure of the traffic commissioners. Under this option, there would continue to be eight regional commissioners.
31. These eight, independent traffic commissioners would continue to be responsible for O-licensing and the management of the new punctuality performance regime in their respective geographic areas. The senior traffic commissioner would have the new statutory role, as provided for in the draft Local Transport Bill, to promote consistency across the traffic commissioners' network, with the power to issue directions and guidance to the traffic commissioners.
32. The draft Local Transport Bill currently being consulted on includes proposals to reform the arrangements for approval of quality contract schemes in England (outside of London). In line with these, the draft Bill provides for an Approvals Board to be appointed, comprising the senior traffic commissioner and two assessors. The assessors would be appointed by the Secretary of State for Transport, from a pool of experts in economics and transport planning. In Wales, Welsh Ministers would continue to act as the approval authority for any proposals for a quality contracts scheme. Arrangements for quality contracts schemes in Scotland is a devolved matter and Scottish Ministers will continue to act as the approval authority.
33. This option provides a robust process for approving quality contracts schemes, but offers less scope than Option 2 to address the additional bus-related responsibilities - in particular the monitoring of bus services under the proposed new bus punctuality performance regime. And there is less opportunity to reprioritise resources.

34. There is also less scope under this option to ensure national consistency, except in terms of the Approvals Board. In addition, the regional structure does not maximise economies of scale.

Option 2 - reform of the current system

35. This approach would be to introduce greater flexibility into the traffic commissioner framework to address the O-licensing issues outlined above and deliver the proposed bus package as effectively and efficiently as possible.

National framework for the traffic commissioners

36. Under this option we propose allowing for the creation of a panel of traffic commissioners for Great Britain (the position of traffic commissioner for Scotland would be retained as would the position of traffic commissioner for Wales) and the delegation of specific functional specialisms to individual traffic commissioners, for example a commissioner with expertise in bus punctuality matters.

Board of traffic commissioners

37. This option envisages the creation of a “Board of Traffic Commissioners”. The post of senior traffic commissioner would be retained as a statutory post, as proposed in the draft Local Transport Bill. In addition, the senior traffic commissioner would sit on a newly created Board comprising two non-executive Directors with expertise in economics and transport planning. The Board would report to a Chair.
38. Two newly created posts - Director O-licensing and Director Bus - would report to the Board and could, at the discretion of the Chair, sit on the Board. This model might be comparable to the board structure in place in the Office of Rail Regulation. Though our intention is not to create a new regulator we do feel there is merit in incorporating a governance structure similar to that which has worked in the context of a body which needs to take account of Ministers' wishes while remaining independent. This is especially the case, as the traffic commissioners would retain their wholly independent status in relation to their quasi judicial decision making role.
39. We envisage that the remit of the new Board would be as follows:
- to act as a central focal point for passenger complaints about bus punctuality and reliability, reporting to Ministers, allocating resources to investigate areas of concern, and influencing stakeholders at a national and local level;
 - to oversee the overall performance of the traffic commissioner system;

- to allocate casework to individual traffic commissioners (we envisage this still largely being on a regional basis, as now, but with more flexibility to redistribute casework in response to fluctuations in workload);
 - to identify key bus punctuality “problem areas” on a consistent basis at a national level, and allocate specific problem areas to traffic commissioners to investigate the underlying causes;
 - to hold the Director O-licensing and Director Bus to account for the performance of the traffic commissioner support staff who work for them (we envisage at present these would be VOSA staff but would welcome suggestions on alternative models); and
 - to advise the Secretary of State for Transport on traffic commissioner appointments, the overall functioning of the system, suggestions for reform, etc
40. We propose that an independent subcommittee of the Board - comprising the senior traffic commissioner and the two non-executive directors - would form the approval panel for quality contracts schemes in England.
41. The key benefits of this model would be:
- a single point to which passengers can complain about the reliability and punctuality of services, with the national body having a higher profile – and stronger role – than the currently dispersed structure;
 - a more flexible system whereby the number – and geographical focus – of traffic commissioners could be varied if that was beneficial;
 - the Board of Traffic Commissioners would be responsible for ensuring that both goods vehicle and bus sectors get the attention and resource they deserve;
 - a system where the traffic commissioners as a whole are accountable for their overall performance, without compromising their independence in relation to individual decisions;
 - that bus punctuality monitoring/analysis work is centralised, ensuring consistency of approach across the country - reducing costs and ensuring consistency and fairness for operators and local authorities - and ensuring that resources are focused on the greatest “problem areas”.

A clearer role in representing passenger interests

42. We believe that the changes outlined above would provide a more high profile, recognised point to which passengers could address their concerns about punctuality and reliability of their local bus services. By having a stronger public presence and better levers to influence local authorities, and bus operators at a national and local level the new board – and their chair – would be in a better position to champion passengers interests than in the currently less focussed system.

43. The Department would welcome views on how passengers' interests could be represented still further – for instance, to mirror the newly created Passenger Transport Users Council in Scotland – by looking at other aspects of local bus services, such as fares, frequency of service and standard of vehicles.
44. The Department would also welcome views on how the Board of the Traffic Commissioners might interact with other organisations currently representing passenger interests – particularly the Bus Appeals Body, a non-statutory body offering independent review of complaints, and involving industry and passenger representation.

Appointment of traffic commissioners

45. In addition the Department is considering the terms of appointment of Traffic Commissioners. Currently, Traffic Commissioners once appointed can remain in post until the age of 65. They can only be removed from office for inability or misbehaviour. The Department is inclined to introduce the concept of time limited, reviewable contracts which may be renewed for further periods by mutual agreement for any future traffic commissioners. The current process would be maintained for existing office holders.
46. The independence of traffic commissioners is of paramount importance, but we feel there are clear advantages in this measure, and in allowing more accountability of the way traffic commissioners carry out their work. This accountability would relate to how the work of the traffic commissioners is carried out and organised, rather than to the actual decision making. As is highlighted above, the independence of the commissioners in the carrying out of their quasi judicial functions is paramount.

Possible changes to the functions of the traffic commissioners

47. Currently traffic commissioners have very little discretion over local bus service registration. If a registration is received from a properly licensed operator, and contains all the necessary particulars, they must accept it. They do have a degree of discretion over whether to allow services (or service variations) to start earlier than the 56 day period of notice (normally doing so if requested by a local authority, e.g. to replace another service that has discontinued).
48. Initial feedback to the main consultation on the draft Local Transport Bill suggests that some stakeholders believe there are circumstances where the traffic commissioners might play a more active role in handling registrations, with powers to refuse to register services or require the particulars to be amended in certain – very restricted – instances. Two instances have been mentioned:

- where the registration of a new service would be likely to impede the provision of services in a quality partnership scheme. The aim would be to tighten the rules relating to whether low quality operators can undermine higher quality operators on quality partnership routes by running services alongside them. The traffic commissioners already have the power either to attach conditions to an operator's licence (under section 26 of the Transport Act 1985) or impose a penalty on an operator (under section 155 of the Transport Act 2000) where that operator is using facilities which have been provided under a quality partnership scheme but is not providing the quality of service set out in that scheme. This provides considerable comfort that lower quality operators cannot free-ride on the facilities put in place by the local authority and participating operators. But it would still be possible for a lower quality operator to run competing services that did not use the facilities and therefore undercut the investments of participating operators.

We would welcome views on whether existing powers enjoyed by the traffic commissioners as set out above, which could be used to prohibit an operator from operating particular local services, provide sufficient protection for statutory partnerships? Giving the traffic commissioners additional powers of intervention might have a negative effect with respect to on-street competition, by removing the potential for competitors to offer an alternative - albeit lower quality - product. Is this a price worth paying or might the loss of competition outweigh the benefits for quality partnership schemes.

- to prevent aggressive and excessive on road competition ("bus wars"). Significant on-street competition in urban areas immediately after deregulation in 1986, has given way to a situation where dominant local companies are often only subjected to episodic on-street competition. But there have been a number of instances in recent years where episodic competition has led to over-busing, with bus stops and other facilities placed under considerable strain, to the detriment of operators overall and the bus passenger. In particular, such competition can result in a reduction over time of the number of services provided by the original operator and, if the new operator then also reduces the number of services, passengers may find that the overall level of services is diminished.

Such instances are relatively rare, but of concern nonetheless. The traffic commissioners already have powers to attach specific traffic regulation conditions to an operator's licence which that operator is then required to meet in the operation of relevant local services (under section 7 of the Transport Act 1985). Such powers may be used to regulate the routes on which services operate, the places where buses may stop and the duration of stopping times, as well as any other matters which the traffic commissioner might consider to be appropriate.

But concern has been expressed by some that the power to impose traffic regulation conditions in respect of a particular service can only be used once the problem has been identified by the traffic authority, and a request

submitted to the traffic commissioner. There is no power for the traffic commissioner to take such action in respect of an anticipated problem, i.e. at the point at which the operator registers the service. We would be grateful for views on how such concerns could best be addressed, whether such concerns are operational or legal and in particular whether there are any measures we should be considering in the context of the Bill.

Such action would clearly need to be shown to be in the public interest, and there would need to be a sufficiently robust appeal mechanism.

We would welcome views as to whether any reduction in competition would be offset by the benefits. It is important that any solution is proportionate to the problem addressed, and does not prove counterproductive.

49. The Department has also been considering whether there might be a need to provide for new services within the area of a quality contracts scheme which would not be a part of the scheme but would not conflict with its objectives. Currently a local authority which makes a quality contracts scheme can exempt certain classes of service from the scheme, and thereby from the provision which otherwise prevents operators from registering local services with the traffic commissioner for the duration of the scheme. However, it may not be possible to anticipate every type of local service that might be proposed over the lifetime of the scheme. As the Bill is currently drafted, if a new service were to be proposed part way through a scheme which the local authority were minded to exempt from the scheme rather than include within it, the authority would need to amend the scheme so as to enable it to be registered (which in turn would involve substantial consultation).
50. The Department has been considering whether it would be appropriate to provide a mechanism to permit the operation of additional services in an area where a quality contracts scheme is in place. Under the Greater London Authority Act 1999, for example, the London bus network is determined by Transport for London (TfL). Local services which are outside of that network can only be operated by a person who has been authorised to do so by virtue of a permit granted by TfL. In deciding whether to grant such a permit, TfL must consult certain people and bodies, and have regard to criteria set out in guidance prepared by the Mayor of London. TfL may also attach such conditions to a permit that it thinks appropriate, in particular to secure the routes to be used, the provision of stopping places, and measures to ensure the safety and convenience of the public.
51. The Department is considering whether there might be merit in providing for a simplified system for enabling the registration of services outside a quality contracts scheme. This would involve balancing the advantages of permitting good value services additional to those provided under the quality contracts scheme, against the benefits of single integrated contract for services in a defined area. The power to approve additional services could be given to the relevant local authority, as is the case in London, Or the traffic commissioners could be given the power to accept registrations of new services within an area covered by a quality contracts scheme provided the application were

supported by the local authority that made the scheme. We would welcome views.

52. The proposed amendments to the legislation which governs the making of quality contracts schemes, as contained in the draft Local Transport Bill, aim at making these a more realistic option in areas where it is in the public interest for local authorities to take greater control over bus services. The Department is of the view that it is essential that in the interim period between making a quality contract and the scheme coming into operation, that there continues to be an operational service. As such, we are considering whether to give traffic commissioners greater powers to determine whether, and when, operators of services that will become subject to the scheme would be allowed to vary or cancel them in the interim period. On the one hand, this measure would address the situation whereby an operator might remove – without good reason – services during the transitional period whilst allowing flexibility to address genuine changes in circumstances. But, on the other hand, this might be regarded by operators as an infringement of their freedom to make commercial decisions. The Department would welcome views before coming to a final decision.
53. The Department would welcome views on all these suggestions before coming to any final conclusions. In parallel with this formal consultation, we will also be considering the pros and cons with the working groups which have been set up with industry and local government through its Bus Partnership Forum. If any of the measures above were to be adopted, we would propose to make any necessary changes to the duties and functions of the traffic commissioners through the Local Transport Bill.
54. Depending on what, if any, measures are brought forward in the Local Transport Bill we will prepare a Regulatory Impact Assessment.

Structure of the new organisation

55. The chart at **Annex B** shows how the overall organisation might look. Under this option the Board would have a role, alongside the senior traffic commissioner, in allocating casework to individual traffic commissioners, taking into account resource pressures. Whilst increased emphasis would be placed on the bus related functions, replacing the current discretionary role towards investigating bus punctuality with a more pro-active role, the reform proposals would also help to further strengthen the consistency of the O-licensing system.
56. The post of Director Bus, with responsibility for both the registration of bus services and the monitoring of the punctuality of those services, would further enhance the capacity for delivery of the proposed bus measures.
57. The Punctuality Monitoring Unit (PMU), reporting primarily to the Director of Bus Services, would be responsible for analysing the evidence on punctuality performance submitted to the traffic commissioners under the new bus

performance regime process, as proposed in the draft Local Transport Bill. The DfT is currently discussing options for data collection with bus operators, local authorities, the senior traffic commissioner and VOSA officials, through a working group set up under the auspices of the Bus Partnership Forum.

58. Currently bus punctuality monitoring is carried out by bus compliance officers employed by VOSA. But under different governance structures this could be done by other VOSA staff or even a separate organisation. We would welcome views on other options.
59. The creation of a Bus Service Registration Unit (BSRU) would provide a more focused role in respect of the registration of bus services. Details of a service would be submitted by bus operators to the BSRU which, in straightforward cases, would register the service.
60. The Director of O-licensing would be responsible for processing new licence applications, variations and cancellations for both goods vehicle and passenger vehicle operators. He or she would work closely with the senior traffic commissioner to ensure that consistent standards were applied. In addition he or she would work with the Director of Bus Services to maintain proper co-operation between their respective areas, improving consistency and ensuring effective data-sharing. This is particularly important as poor performance in either area can affect an operator's good repute.
61. This option would introduce a national, rather than the current regional, capability for the traffic commissioners. This option proposes the appointment of traffic commissioners with the power to work anywhere in Great Britain, though for practical purposes they would be assigned administratively to a particular geographical area. This would increase flexibility for the Board in terms of moving resources around to deal with unexpected pieces of work, or even to amalgamate/change the way the way the areas are organised.
62. In the ways described above, the proposed model would help to strengthen national consistency in the system as highlighted earlier in this paper. There is already a power in the Public Passenger Vehicles Act 1981 to make secondary legislation which could be used to vary the traffic areas, but any necessary consequential amendments to existing legislation would be included in the Local Transport Bill.
63. The Department is considering options for the exact functional roles and governance arrangements for the Board.
64. As referred to earlier, VOSA staff currently provide administrative support to the traffic commissioners and also issue licences in straightforward cases under delegated authority from the traffic commissioner. It is not envisaged that this arrangement will change. However, an alternative option would be to delegate the function of O-licensing direct to VOSA, with the traffic commissioners performing an appeals function. Whatever the model, the Transport Tribunal would remain the ultimate appeals body for operator licensing.

65. In order to facilitate the delivery of an effective bus performance regime the Department is considering the scope to allow the Board to sign and manage a service level agreement with VOSA (or another body) to procure the necessary resources.

Funding and resources

66. Option 2 would involve transitional costs, but a national approach might deliver some modest long-term savings relative to the current regional structure of the traffic commissioners. As the ongoing centralisation of operator licensing administration in Leeds is demonstrating, savings can be made from centralisation and the use of technology can allow for an efficient provision of a service to any part of the country. This option would therefore bring benefits to bus operators from not having to deal with various different traffic areas.
67. The issue of how to fund the new Board and its support staff is still under consideration. In line with overall Government policy, it should, consistent with Executive Agencies such as VOSA and DSA, be funded primarily by those who use its services, i.e. the bus, coach and road haulage industries, rather than out of general taxation. This funding should be roughly proportionate to the costs that the industries and individual operators impose on the traffic commissioners and/or the benefits they obtain from them (some of which would be costs and benefits transferred from VOSA and some of which would be new, or much enhanced).
68. So far as possible we would wish to recover the costs from operator licence and bus registration fees and enable the Secretary of State to retain authority to set fee levels. However, the current fee structure, at least for bus registration, does not accord well with the cost of enforcing compliance, since it is not time-related. We are therefore considering the case for changing the bus registration fee raising powers, and including any necessary amendments in the Local Transport Bill. Other new or enhanced fee raising powers may also need to be considered.

Scotland and Wales

69. The Scottish Traffic Commissioner is a “cross-border public authority” in terms of the Scotland Act 1998, that is to say an authority that exercises some functions for which legislation is reserved to the Westminster Parliament (e.g. PSV and HGV operator licensing) and others that are devolved (e.g. local bus service registration). That Commissioner also exercises some additional functions under Scottish legislation.
70. Because of the unique position of the Scottish Traffic Commissioner, and because the majority of new provisions in the draft Local Transport Bill do not extend to Scotland, we are proposing to retain the separate Scottish Traffic

Area and Commissioner, who would continue to handle all issues related to Scotland. Under this approach, the Scottish Traffic Commissioner would come within the Board structure, but would not normally be allocated any work relating specifically to England and Wales - an exception would be if the Scottish Traffic Commissioner were appointed Senior Traffic Commissioner. Under the provisions in the draft Bill, the Scottish Traffic Commissioner would be subject to directions and guidance from the Senior Traffic Commissioner, though in relation to reserved matters only. In relation to devolved matters the Scottish Traffic Commissioner would not be accountable to the Board.

71. Regarding Wales, local bus service registration is not devolved, and the proposed new punctuality regime will extend to Wales. The only significant difference from England under the draft Local Transport Bill is that the procedure for approving quality contracts schemes in Wales will remain with Welsh Ministers rather than passing to the new approval board. It seems appropriate, therefore, for Wales to be included in the new arrangements described in this document, although the quality contract approval role would not extend to Wales.
72. In keeping with the general principles of devolution, however, we propose that there should continue to be one traffic commissioner with particular responsibility for Wales, even if this function were combined (as it is at present) with functions relating to England. The Welsh Traffic Commissioner would have the same relationship with the Board as the English traffic commissioners. We would also plan to retain the separate Welsh Traffic Area.

Part 3 - Next Steps: Consultation

73. This consultation paper should be read alongside the Consultation document “*Strengthening local delivery: The draft Local Transport Bill*” published on 22nd May. As explained above the measures covered in this paper flow from those in the draft Bill. As with the draft Bill, final decisions have not yet been made – we would therefore welcome any comments on the above measures. In particular we would welcome comments on the following:

A new role for the traffic commissioners

- Do the proposals strike the right balance between local accountability (e.g. through the current regional traffic commissioner structure) and national consistency?
 - What are your views on the resource implications of the proposed changes?
 - Should the terms of appointment for future traffic commissioners be fixed?
 - Do you think the proposals in this paper give the traffic commissioners a strong enough role in representing passenger interests? If not, what changes would you like to see?
 - Would limiting the terms of appointment compromise the impartiality of the traffic commissioners?
 - What are your views on allowing the traffic commissioners powers to refuse or modify an application to register a service on the grounds that a quality partnership scheme is in operation in the proposed area of the service?
 - What are your views on allowing the traffic commissioners powers to refuse or modify an application to register a service on the grounds that such a service may lead to aggressive and excessive on road competition?
 - What are your views on the proposal to allow for the operation of additional services in an area where a quality contracts scheme is in place? Do you favour local authorities being granted such a power or should this power be conferred upon the traffic commissioners (subject to the application having the support of the local authority responsible for the scheme)?
 - What are your views on the proposal to allow traffic commissioners to allow or refuse dispensations to the 56 day rule in the pre-contract transitional period for a quality contracts scheme in order to protect bus passengers?
 - Do you agree that separate traffic areas be retained for Scotland and Wales?
74. We would welcome views from all who have a stake in these proposals - practitioners who may be involved in their delivery, users of transport services or all others who may be affected. The consultation closes on 12th October 2007, in parallel with the consultation on the main body of Bill proposals.

75. The Department will also continue work with practitioners through established fora, including the Partnership Forum to test delivery and implementation issues.

How and when to respond

76. Please send your responses by 15th October 2007 to:
Local Transport Bill Consultation
3/16 Great Minster House
76 Marsham Street
London
SW1P 4DR
[marking the envelope "LTB RESPONSE - TRAFFIC COMMISSIONERS" at the top-left corner]
or by e-mail to LocalTransportBill@dft.gsi.gov.uk
77. A list of organisations/stakeholders that we have sent this consultation to is included in Annex D. If you have any suggestions of others who may wish to be involved in the consultation process please let us know.
78. This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" which are included at Annex C. An Impact Assessment has been prepared which is available with the draft Local Transport Bill at :
<http://www.dft.gov.uk/consultations/open/localtransportbill/draftltbria>
79. A summary of responses to this consultation will be published on our website: www.dft.gov.uk after the consultation period has closed.

Disclosure of responses

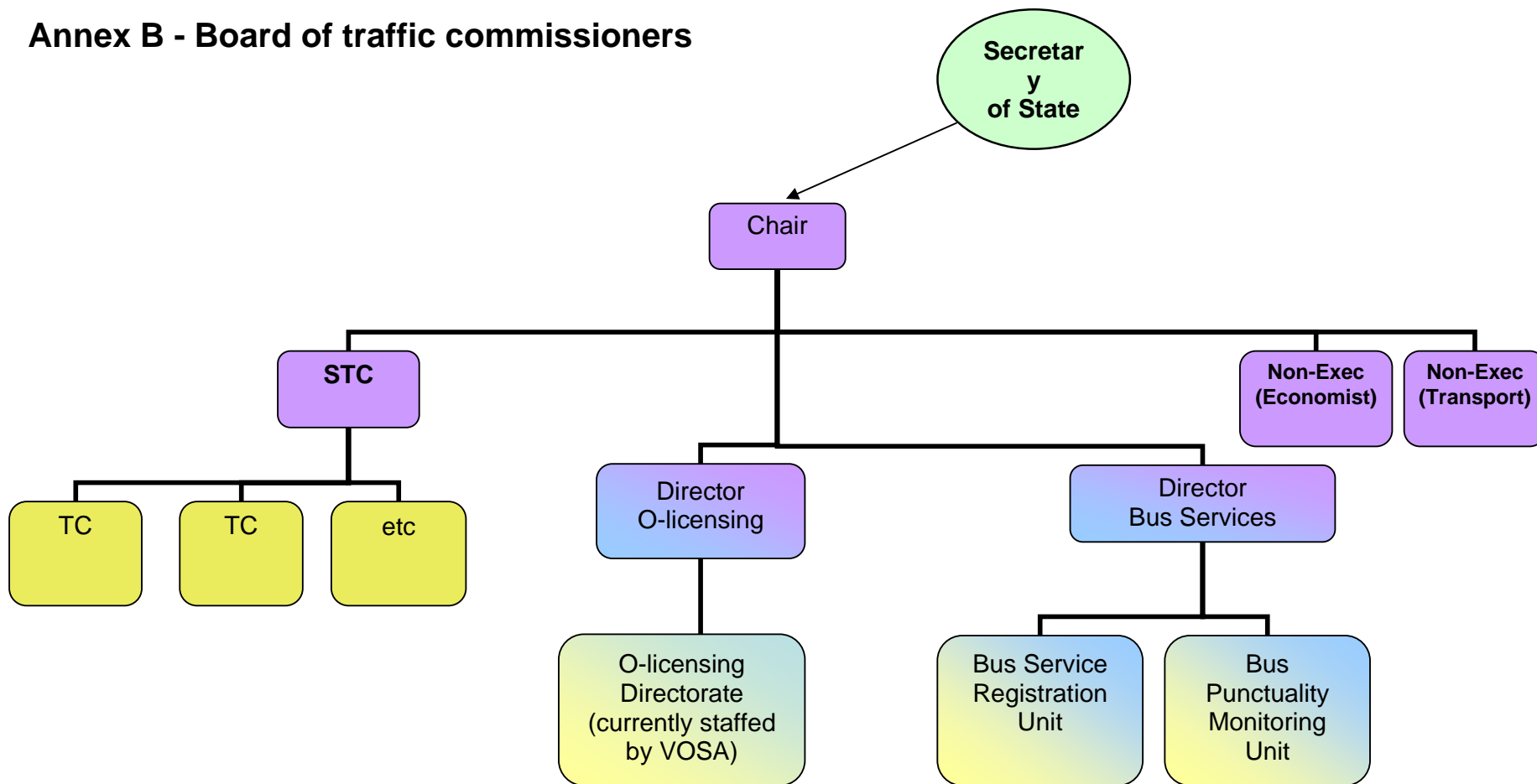
80. According to the requirements of the Freedom of Information Act (2000), all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.
81. All responses will be included in any summary of results, although individuals will not be identified. Names and addresses may be held in an electronic database of interested parties for the purpose of distributing future documents on similar issues. However, any such details on a database will not be given to a third party.
82. If you wish to view individual responses after the consultation period has ended, these will be available for public viewing for a period of six months at

the DfT Library and Information Centre, Ashdown House, 123 Victoria Street, London SW1E 6DE. The Library is open Monday to Friday during office hours. Anyone wishing to inspect the responses is requested to telephone the Librarian on 020 7944 3039 to make an appointment (without which it will not be possible to gain admittance).

Annex A - Statutory functions and powers of the traffic commissioners

1. Traffic commissioners are appointed by the Secretary of State for Transport under section 4(2) of the Public Passenger Vehicles Act 1981 (PPV Act). There must be a traffic commissioner for each Traffic Area into which Great Britain is divided (section 4(1)).
2. In carrying out public inquiries, the traffic commissioner is considered to be a 'tribunal' for the purposes of the Tribunals and Inquiries Act 1971. Appeals against a traffic commissioner's decisions are made to the Transport Tribunal.
3. Traffic commissioners are responsible under the PPV Act for the granting and issuing of public service vehicles (PSV) licences, the registration of local bus services under the Transport Act 1985 and the granting and issuing of goods vehicle operator licences (GVOL). The latter are issued under the Goods Vehicles (Licensing of Operators) Act 1995. Traffic commissioners are also empowered to take regulatory action against licences and licence holders and their transport managers. Traffic commissioners also have power under the Transport Act 1985 and the Transport (Scotland) Act 2001 (Act of the Scottish Parliament) to impose penalties for the failure to run registered services.
4. If requested to do so by a traffic authority, a traffic commissioner may, under section 7 of the Transport Act 1985, impose traffic regulation conditions for the purpose of preventing danger to road users or reducing traffic congestion. The commissioner may regulate the routes and stopping places of local services and the period of stopping.
5. Under part IV of the Road Traffic Act 1988, traffic commissioners are given responsibility to consider the fitness based on the conduct of drivers who hold or apply for passenger-carrying vehicle (PCV) or large goods vehicle (LGV) driving licences.
6. The Secretary of State has power under schedule 2, paragraphs 3 and 4 of the PPV Act to appoint deputy traffic commissioners. Paragraph 7 gives power to the Secretary of State to appoint such persons as he considers appropriate to act as officers and servants. In practice this is done through the Department for Transport and its Executive Agency, the Vehicle and Operator Services Agency.

Annex B - Board of traffic commissioners



Annex C - Code of Practice on Consultation

The Government has adopted a code of practice on consultations. The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.

Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

The code contains six criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

Consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

A full version of the code of practice is available on the Cabinet Office website at:

<http://www.cabinet-office.gov.uk/regulation/consultation/code.asp>

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

Andrew D Price
Consultation Co-ordinator
Department for Transport
Zone 4/13 Great Minster House
76 Marsham Street
London, SW1P 4DR

email: consultation@dft.gsi.gov.uk

Annex D - List of stakeholders

The consultation has been sent to a wide range of interested parties, including:

- Traffic Commissioners
- bus operators in the private and voluntary/community sectors
- freight and road haulage associations
- local authorities, Passenger Transport Authorities and Executives
- public transport user groups
- bodies representing the interests of particular social, ethnic or other groups
- transport advisory bodies (including CfIT and DPTAC)