

## Explanatory Note

### This Note is not a part of the Order

#### Introduction

1. The Competition Commission (CC) published *Local bus services market investigation. A report on the supply of local bus services in the UK (excluding Northern Ireland and London)* on 20 December 2011 (the Report).
2. The Report set out the CC's findings that there are features of markets for local bus services which adversely affect competition.
3. The CC has decided on a package of remedies to address the adverse effect on competition and the consequential detrimental effects on customers identified in the Report. The Local Bus Services Market Investigation (Access to Bus Stations) Order 2012 gives effect to part of these remedies.
4. The Order comes into force on 26 July 2012. Unless otherwise stated, it is not intended that there should be any further transitional period in relation to any of the provisions contained within the Order.

#### Possible consequences of not complying with the Order

5. Section 167 of the Enterprise Act 2002 (the Act) places a duty on any person to whom this Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
6. Section 167 of the Act also provides that the Office of Fair Trading (OFT) and the CC can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

#### Review of this Order

7. The OFT has a duty under section 162 of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Article 7.5 of the Order requires Managers to provide the OFT with information to allow it to monitor and review the operation of the Order.

#### Status of this Explanatory Note

8. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

#### Structure of the Order

9. The Order is divided into seven parts:
  - Parts 1 and 2 contain general provisions, which include specifying when the Order comes into force, the scope of the Order and definitions that are used throughout the Order (and which are also used in this Explanatory Note).

- Part 3 contains an obligation on Managers of Relevant Bus Stations to provide Users access to such stations on fair and reasonable terms and without undue discrimination.
- Part 4 contains an obligation on the Manager to consult on and make Conditions of Use.
- Part 5 contains an obligation on the Manager to determine charges payable by Users on a fair and reasonable basis and without undue discrimination.
- Part 6 contains provisions relating to dispute resolutions between Managers and Users.
- Part 7 contains provisions relating to record keeping and monitoring.
- The Schedule provides for certain information to be specified in the Conditions of Use.

### **Scope of this Explanatory Note**

10. This Explanatory Note deals with each of the Articles in the Order.

### **PART 1—General**

11. Article 1 gives the Order its name and scope, and specifies when the Order comes into force. The Order does not apply to Northern Ireland nor to any Bus Station operated by Transport for London nor any Relevant Bus Station to the extent to which a Local Bus Service operates within London from that Relevant Bus Station.

### **PART 2—Interpretation**

12. Article 2 contains the definitions for the capitalized terms used in the Order and in the Schedule. Terms that are relevant to only one Article are defined in that Article.
13. Some key definitions are ‘Bus Station’, ‘Coach Service’, ‘Local Bus Service’, ‘Manager’ and ‘Relevant Bus Station’.

**Bus Station**—This excludes stations where 95 per cent or more of services operating from that station each year are Coach Services and stations where the total floor area at ground level does not exceed 600 m<sup>2</sup>. This would include, for example, bus stands and layover parking bays, and passenger amenities such as passenger seating areas or restrooms where these fall within the specified area. The Bus Station floor area would not include the car parking area at a park-and-ride site.

**Coach Service**—In determining a Coach Service regard is had to all the circumstances, including various specified factors. Where a service is a combination of a Local Bus Service and a Coach Service, that service is deemed a Coach Service for the purposes of this Order.

**Local Bus Service**—This incorporates the definition of ‘local service’ in section 2 of the Transport Act and covers short distance journeys where a passenger is set down no more than 15 miles from the place where he is picked up. Where a route covers London, any part of the service falling outside London constitutes a separate Local Bus Service. However, if a Local Bus Service is part of a Coach Service, it shall not be deemed a Local Bus Service for the purposes of this Order.

**London**—This encompasses the 32 London Boroughs and the City of London.

**Manager**—is a Local Bus Operator, persons acting under any arrangement, contractual or otherwise, with the Local Bus Operator to manage the Relevant Bus Station, other than persons bound by section 82(1) of the Transport Act (see below), or a company within the same group of companies as the Local Bus Operator.

**Relevant Bus Station**—includes a Bus Station which is operated *other than* in accordance with sections 82(1) and 82(3) of the Transport Act or pursuant to a contract with a local authority. This is because section 82 of the Transport Act already prohibits Passenger Transport Executives (PTEs) and local authorities from discriminating, directly or indirectly, against any holder or class of holder of a PSV operator's licence in the provision or operation by them of bus stations. The requirement in the Transport Act also extends to any person to whom a PTE has contracted out the operation of a bus station provided by it, under its contracting-out powers.

### **PART 3—Access to Relevant Bus Stations**

14. Article 3.1 provides that the Manager shall grant the User access to and use of the Relevant Bus Station on fair and reasonable terms and without undue discrimination between the User and each other User and also with the Manager. Thus the Manager should offer access to and use of a Relevant Bus Station on no less favourable terms to one User than those under which it provides access and use to other Users.
15. Article 3.4 gives an indication of 'fair and reasonable'. For example, it is reasonable for a Manager to refuse access to a Relevant Bus Station where there is no spare capacity at the Relevant Bus Station and the Manager is not obliged to grant access to a future User to the detriment of an existing User.
16. The purpose of the obligation in Article 3.1 is to provide access to Relevant Bus Stations for Local Bus Operators on fair and reasonable terms. However, a Relevant Bus Station may provide services other than a Local Bus Service, most notably Coach Services. Article 3.5 provides that the obligation in Article 3.1 is limited to the grant of access to Relevant Bus Stations insofar as it is used for the provision of a Local Bus Service and not a Coach Service.
17. Part 3 of the Order does not oblige the Manager to apply fair, reasonable and non-discriminatory terms to operators of Coach Services or, in a 'mixed-use' Bus Station, to parts of a Bus Station used for the provision of Coach Services.

### **PART 4—Conditions of Use**

18. Article 4.1 provides that the Manager must make and publish Conditions of Use in accordance with the provisions in the Schedule.
19. Article 4.2 provides that the Manager must consult on the draft Conditions of Use.
20. Article 4.5 provides that any subsequent material amendment to the Conditions of Use is also subject to this consultation procedure. However, this does not apply to unforeseen or exceptional circumstances specified in the Conditions of Use requiring a temporary amendment, nor to amendments made in accordance with the final determination of an Independent Expert.

21. Article 4.6 provides that, in relation to Relevant Bus Stations operating as such on the date the Order comes into force, the Manager must make and publish the Conditions of Use by 31 January 2013. The Manager must consult on the draft Conditions of Use by 31 October 2012.
22. Article 4.7 makes similar provisions in relation to Bus Stations which become Relevant Bus Stations after the date on which the Order comes into force. The Manager must consult on the draft Conditions of Use within three months and make and publish them within six months from the date on which the Bus Station becomes a Relevant Bus Station. This may be circumstances where a new Bus Station has been built or where there is a change to the ownership or management of an existing Bus Station.
23. Article 4.8 provides that where a User is to be granted access to and use of the Relevant Bus Station, the Manager must enter into a written agreement with the User based on the relevant Conditions of Use.

## **PART 5—Charges at the Relevant Bus Station**

24. Article 5.1 provides that where the Manager imposes a charge for access to and use of the Relevant Bus Station the Manager shall determine all charges payable by the User on a fair and reasonable basis and, as in Article 3.1, without undue discrimination between Users, and also between Users and the Manager.
25. In relation to Departure Charges, the Manager is required to take into account the guidelines in Article 5.2.
26. A detailed worked example of the calculation of Departure Charges is provided in the annex to this Explanatory Note (Note on calculation of Departure Charges).

## **PART 6—Dispute Resolution**

27. Part 6 applies to a single User and, where the same dispute is relevant to more than one User, a Group.
28. Article 6.1 provides that a dispute is deemed to arise when the User informs the Manager in writing of its intention to initiate the dispute resolution procedure set out in the Conditions of Use. This includes the appointment of an Independent Expert. The identity of the Independent Expert may vary depending on the nature or complexity of the dispute. For example, in relation to a dispute regarding charges, the Independent Expert may be a qualified Accountant or a firm of Auditors, whereas, for example, a Local Transport Authority (LTA) can have the necessary knowledge and experience in a dispute regarding access to a Relevant Bus Station.
29. Article 6.2 provides that a dispute regarding the provisions of the Conditions of Use must be initiated within eight weeks of the Conditions of Use (or disputed amendment) coming into effect or first applying to the User, whichever date is later.
30. Article 6.5, paragraph (b) provides that the cost of appointing an Independent Expert is to be borne equally between the Manager and User. Where the dispute involves a Group, half of the cost of appointing the Independent Expert is to be borne by the Manager and the other half by the Group as a whole.
31. Article 6.5, paragraph (c) provides that the dispute must be resolved within 50 calendar days from the date on which the dispute arises. This is so that a dispute

may be resolved before the 56 days' notice period ends for new service registration with the Traffic Commissioner.

32. Article 6.5, paragraph (d) provides that the Independent Expert's determination is final and binding on the Manager, the User and, to the extent appropriate, all other Users.
33. Article 6.6 provides that an Independent Expert may substitute his own assessment of a fair charge where the Manager cannot demonstrate to the Independent Expert's satisfaction that a disputed charge has been calculated on a fair and reasonable basis, without undue discrimination between Users, and also between Users and the Manager.
34. Article 6.7 allows future Users to dispute a refusal to grant access to the Relevant Bus Station.
35. Article 6.7 provides that a future User and Manager may enter into an interim contract based on the current Conditions of Use. This is so that the future User can use the Relevant Bus Station whilst a dispute is being resolved.
36. Article 6.7 further provides that, upon determination of the dispute, the Manager and future User may enter into a new contract (or vary and finalize the interim contract) in accordance with the outcome of the dispute. Alternatively, the future User may wish to terminate the interim contract without entering into a new agreement.
37. Article 6.9 provides that until a dispute is finally determined, the User must continue to pay all applicable charges and the Manager must continue to provide access to the Relevant Bus Station.

## **PART 7—Maintaining records and monitoring**

38. Article 7.1 provides that the Manager must maintain a written record of all disputes with Users. Such records must cover the preceding two years and be submitted to the relevant LTA by no later than 1 April.
39. Article 7.6 requires the Manager to keep under review the Departure Charge and Layover Charge specified in the Conditions of Use.

## **Schedule—Conditions of Use**

40. The Schedule sets out details of the information to be provided in the Conditions of Use. The Conditions of Use must make clear that they are applicable as between the Manager and Users of the Relevant Bus Station and reflect the obligation in Article 3.1 of the Order.
41. The Conditions of Use must provide certain details about the Relevant Bus Station such as its operating hours, its layout and its Bus Stand and Layover Parking Bay capacity. They must also indicate the Manager's policy for allocating Bus Stands and Layover Parking Bays to Users.
42. The Conditions of Use must also provide details of all charges payable by Users and an indication of how such charges have been calculated.
43. Finally, the Conditions of Use must provide details of the Manager's dispute resolution procedure.