

Legislative Council Panel on Transport

Regulatory Framework and Licensing System of Non-Franchised Bus Operation

PURPOSE

This paper seeks Members' views on the measures to be implemented for improving regulation of non-franchised bus ("NFB") operation proposed by the Administration.

BACKGROUND

2. In response to the concerns among the public transport trades in recent years about an oversupply of NFB in the market and operation of unauthorised NFB services by individual NFB operators, the Administration invited the Transport Advisory Committee ("TAC") to review the regulatory framework and licensing system of NFB operation in late 2003. The TAC set up a Working Group to carry out the Review of Regulation of Non-franchised Bus Operation. Between end 2003 and July 2004, the TAC Working Group had two meetings each with the NFB, taxi and public light bus trades to listen to their concerns and consider their views. The Review was completed in July 2004. Upon receipt of the review report endorsed by the TAC, the Administration briefed the Legislative Council Panel on Transport ("the Panel") on the TAC's recommendations for improving the regulation of NFB operation on 19 July 2004. At the meeting, the Administration agreed to consult the NFB trade on the proposed measures before implementing the new measures. Subsequently, the Administration met with the NFB trade from August to end of 2004. Views given at that time by the NFB trade on these proposed measures are set out in the ensuing paragraphs where appropriate.

RECOMMENDED MEASURES FOR IMPLEMENTATION TO IMPROVE REGULATION OF NFB OPERATION

3. After careful consideration of the concerns expressed by the trade throughout and the need to maintain the effectiveness of the measures arising from the TAC's review, the Administration proposes to implement a package of measures to improve the regulation of NFB operation. These measures are formulated based on the TAC's recommendations. The three categories of measures, aiming to coordinate the change in NFB services with demand; strengthen regulatory control over NFB operation; and enhance effectiveness and efficiency of enforcement actions are explained in paragraphs 4 to 33 below.

Measures to Coordinate the Change in NFB Services with Demand

4. The NFB trade agree to the need to contain the growth of NFB fleet so as to address the problem of oversupply of NFB services. In this respect, the Administration recognises the need to coordinate the change in NFB services with demand more effectively.

5. In view of the NFB trade's concern that the impact of the proposed measures on existing operators should be minimised, we propose to adopt very stringent measures in processing applications for "New Supply" of NFB services and vehicles¹ with a view to ensuring that new NFB services and vehicles will only be approved when there is justified demand. For applications related to "Existing Supply"², greater flexibility will be allowed. The NFB trade agree to this approach as they consider tightened control on New Supply of NFB essential. To this end,

¹ "New Supply" of NFB services and vehicles refers to applications for new passenger service licence ("PSL") (including its associated endorsements and vehicles) from new applicants, applications for additional endorsements and vehicles from existing operators, and applications for future renewal of the above PSLs and endorsements.

² "Existing Supply" refers to applications for renewal of PSLs or endorsements from existing operators and application for replacement of vehicles from existing operators.

the following measures will be implemented –

(I) Stringent Vetting of NFB Applications and Documentary Requirements

6. All NFB applications will continue to be assessed stringently against the criteria stipulated under section 28 of Road Traffic Ordinance (“RTO”), Cap 374, which include, in addition to any other matter that the Commissioner for Transport (“C for T”) considers relevant to the application, the following factors –

- (a) any policy direction from the Chief Executive with respect to the provision of public transport services;
- (b) any limit in force on the number of vehicles that may be registered;
- (c) the need for the services to be provided by the applicant;
- (d) the level of services already provided or planned by other public transport operators;
- (e) traffic conditions in the areas and on the roads where the services are to be provided; and
- (f) the standard of services to be provided by the applicant.

7. To justify an NFB application related to New Supply, an applicant has to provide relevant supporting documents, e.g. contracts with validity period of 6 months or above, to prove the genuine long term need for the proposed new services.

8. An exiting NFB operator can renew his service endorsement for his vehicles under Existing Supply before its expiry date with a contract of any duration. If he does not have a valid contract or sub-contract for a particular service endorsement when the endorsement is

due for renewal, the Administration agrees to the NFB trade's request that the existing operator can renew his endorsement anytime within the validity period of the PSL, instead of within 6 months of the expiry date of the endorsement as originally suggested by the TAC. Moreover, when the operator applies for renewal of such endorsement, he is required to produce a supporting contract with a validity period of 3 months or more, unlike New Supply applications which should be supported by a contract valid for at least 6 months. In case a contract cannot be obtained before the PSL expires, the operator will be required to submit a new application for the same endorsement in future, which will be regarded as an application for New Supply.

(II) Full Fleet Vetting

9. To enable that the utilisation of the existing fleet of an applicant would be examined in considering applications for service or fleet expansion so as to ensure that New Supply will be approved only when the fleet concerned is well utilised, full fleet vetting currently applied to applications for additional vehicles and / or additional endorsements from existing operators will continue. In addition, it is recommended that full fleet vetting should also be applied to –

- (a) applications for renewal of new PSL and their associated endorsements granted to new applicants; and
- (b) applications for future renewal of existing PSL which involves additional vehicles and / or additional endorsements.

(III) Single / Restrictive Endorsement

10. At present, an NFB vehicle may be granted with more than one endorsement for the provision of different types of services and there is no restriction on the number of endorsements for an NFB. This arrangement leads to an excessive supply of endorsements in the market and causes difficulties in identifying the types of service being provided by an NFB, thus hamper effective regulation of NFB operation.

11. To address the problem, the TAC affirms that it will be an effective measure that New Supply of vehicles applied for by new applicants and existing operators should normally be granted with one type of endorsement only. Two endorsements would be approved only under very exceptional circumstances with justifications and supporting documents to be provided by applicants. Two endorsements may be approved if the services under the two endorsements concerned are complementary to each other, for example, tour service (A01) and hotel service (A02). The NFB trade agree in principle that this measure should be applied to New Supply. In response to the NFB trade's request, if the vehicle so applied for is sourced from the existing registered NFB fleet and will not entail a net increase in the total number of NFB, a more flexible approach will be adopted in the granting and change of endorsements. In this respect, such vehicle transferred among NFB operators (regardless of whether they are existing or new operators) should normally not be granted with more than 3 endorsements. These arrangements will on the one hand optimise the use of the existing NFB fleet, and on the other hand reduce the need for additional vehicle if there is spare capacity within the Existing Supply. Transfer of vehicles arising from corporatisation of a PSL holder, however, will be exempted from this requirement if justifications are provided to prove the need of service. It is because such a transfer only involves the change of the business model of an individual PSL holder from a person to a limited company.

(IV) Additional Endorsement for Operators Holding A08 Endorsement Only

12. The Administration appreciates that some existing small operators are currently holding contract hire service (A08) endorsement only. In order to improve their viability, we support the TAC's recommendation to allow them to apply for one additional endorsement if sufficient justification for the proposed service could be furnished.

(V) Cessation of Full Fleet and Automatic Endorsement

13. In order not to exacerbate the problem of excessive growth of endorsements in the NFB market which may eventually intensify unhealthy competition within the NFB trade and result in an adverse impact on other transport trades, the arrangement of full fleet endorsement (i.e. automatic granting of the same endorsement to the full fleet of a PSL holder) and automatic granting of hotel service (A02) endorsement to vehicles with tour service (A01) endorsement should continue to be not applicable for New Supply. Existing operators, however, can retain their multiple endorsements as long as contracts are provided to prove the need of service.

14. The measure implemented since December 2003 to cease automatic granting of contract hire service (A08) endorsement to vehicles currently without such endorsement, except under exceptional circumstances, will also be continued. To ensure there will be adequate supply of A08 endorsements to cater for ad hoc service demand and having regard to the view of the NFB trade that A08 endorsement is critical in help to maintain viability of existing NFB operation, in particular, for small operators, the Administration has taken on board the NFB trade's suggestion that NFB vehicles within the existing registered fleet transferred among new or existing operators would be allowed to retain the A08 endorsement if –

- (a) such vehicle has A08 endorsement before the transfer and thus will not result in a net increase in the total number of A08 endorsements;
- (b) the transfer will not result in net increase in the NFB fleet; and
- (c) the new owner of the vehicles applies for the A08 endorsement with supporting documents to justify the application.

(VI) Sourcing Vehicles from Existing Fleet

15. The NFB trade share the view that as a further step to contain the growth of total number of NFBs in the market, incentives should be provided to encourage applicants to source vehicles from the existing fleet (which do not require replacement vehicles) in the market, in lieu of purchasing additional vehicles which will entail a net increase in NFB fleet, to meet new service demand. Applicants who intend to purchase additional vehicles would be given a period of six months to try to source vehicles from the existing NFB fleet. Their applications would be processed as soon as they could source vehicles from the existing fleet or at the end of the period if they could not source such vehicles during the period. The length of the period will be kept under review to suit the changing circumstances.

(VII) Requirements for Replacement Vehicle

16. To avoid undue growth in the total carrying capacity of the NFB fleet due to increased size of replacement vehicles and to avoid a rising number of large NFBs creating traffic problems on roads, a replacement vehicle applied for should be of comparable capacity with the one to be replaced unless there are valid justifications, e.g. vehicles of the same capacity are no longer available in the market, genuine need for the proposed increase in carrying capacity, etc.

(VIII) Application for Operation of Scheduled Services by NFB Operators

17. As mentioned in paragraph 6 above, the need for new NFB services should be considered as established only if the criteria stipulated in section 28 of RTO (Cap 374) are met. We support the general principles that should be considered in processing applications for new residents' service and new employees' service recommended by the TAC as stipulated at **Annexes A and B**.

18. For applications for new residents' service and new employees' service, the NFB trade suggest that preference of the user group and full subsidization by employers should also be taken into account if the proposed services meet the general principles. We have taken on board the trade's view and reflected these in the principles for consideration. As for existing scheduled services, e.g. residents' service (A06), in reviewing the need for any adjustment to existing NFB services, the Administration will consider both the changes in the level of regular public transport services and the changes in passenger demand for the NFB services concerned at the time of renewal.

Measures to Strengthen Regulatory Control over NFB Operation

(IX) Addressing the Existing Loopholes in the Regulation of Contract Hire Service Operation

19. The contract hire service (A08) endorsement is to cater for ad hoc demand for transport services. Some individual NFB operators have used the A08 endorsement to provide services of a regular nature, which goes beyond A08's intended scope of operation. In particular, free bus services provided for shopping malls or clubs, which have fixed destination and routeing, are often subjects of complaints from other public transport services operating in the same areas for imposing unfair competition to them. The public light bus and taxi trades consider that there is too much flexibility for the operation of contract hire service, resulting in some individual operators providing services beyond the intended purposes of A08 services. They have repeatedly expressed that there is a need to examine the impact of these regular contract hire services on existing public transport services.

20. In order to ensure that A08 services would comply with their intended purpose for serving ad hoc demand, A08 services of a regular nature should be examined by the Transport Department ("TD") before they are operated. We propose to require operators of A08 services to obtain prior approval from C for T for all contract hire services with the same origin and destination areas and operated for more than 2 days either

intermittently or consecutively in a period of 30 days, before commencement of service. The above services include those operated either solely by an operator or with other operator(s) whether jointly or otherwise. General principles that should be considered in processing applications for contract hire services are at **Annex C**.

Annex C

21. The types of A08 services that require prior approval are subject to review by C for T from time to time in consultation with the trade so that changes can be made if necessary to reflect changing circumstances.

(X) Imposition of Additional PSL Conditions

22. It is not uncommon for PSL holders to disclaim responsibility for unauthorised NFB operation, arguing that they have hired out the vehicles for a third party and have limited control over the use of the vehicles. To address this problem, the NFB trade agreed with the approach that additional PSL conditions should be imposed to increase the responsibility of PSL holders. These will include –

- (a) PSL holders to ensure that the services operated are in accordance with the licence conditions and the PSL holders should be held ultimately responsible for any breach of PSL conditions associated with the NFB;
- (b) proper contracts should be signed between the PSL holders and the hirer in the case of hiring out an NFB for provision and operation of NFB services. A copy of document containing the purpose of the hire and basic operational details signed by all parties concerned (including PSL holders, drivers and hirers) should be kept by the PSL holders;
- (c) the PSL holders should keep a daily operation record of each of the buses under the PSL;

- (d) the document of hiring and the daily operation record mentioned in (b) and (c) above should be produced to C for T upon request; and
- (e) the PSL holders should take adequate measures such as staff training, inspection and monitoring of the use of the buses to avoid misuse of the buses.

The objective of the additional conditions is to ensure that the PSL holders will take reasonable steps to ensure proper use of their vehicles in compliance with their licence.

(XI) Stipulation of Schedule of Service

23. At present, schedule of service is stipulated for international passenger service (A05) and residents' service (A06). The NFB trade agree with this approach that the requirement should be extended to shuttle services provided under hotel service (A02), student service (A03) for tertiary education institutions, employees' service (A04), and contract hire service (A08) which are of a regular nature with same origin and destination areas to facilitate better monitoring and enforcement against unauthorised operation.

24. The schedule of service will stipulate all relevant operating details including fares, routeings, operating hours, frequency, number and types of buses, stopping points, etc. Drawing up schedules of service for all NFB services that are regular in nature can facilitate monitoring and enforcement action as non-compliance to the schedules will constitute breach of licensing conditions.

(XII) Joint Applications by Hirers and Operators

25. At present, hirers of residents' service (A06) are required to submit joint applications together with NFB operators to signify their full knowledge of the details of the proposed service. To ensure that hirers

will not engage NFB operators for the provision of services before proper approval is obtained, this requirement will be extended to the following services of a regular nature with same origin and destination areas –

- (a) shuttle services provided under hotel service (A02);
- (b) student service (A03) for tertiary education institutions;
- (c) employees' service (A04);
- (d) international passenger service (A05); and
- (e) contract hire service of a regular nature (A08).

Measures to Enhance Effectiveness and Efficiency of Enforcement Actions

26. TD tackles the unauthorised NFB services from all fronts, including improvements to public transport network, regulating the activities of NFB through traffic management schemes and taking enforcement actions such as ticketing, summons actions and inquiries. From January 2003 to end December 2004, TD initiated 67 inquiries. Among the cases in which decisions have been made, the PSL and vehicle licences in respect of about 61 buses registered under 35 PSL holders were either permanently cancelled or suspended for one to six months.

27. The NFB trade support introduction of measures to strengthen enforcement actions against unauthorised NFB operation. The same view is also shared by the taxi and PLB trades. To enhance effectiveness and efficiency of enforcement actions, measures set out in paragraphs 28 to 33 will be implemented.

(XIII) Improve the Identification System of NFBs

28. To enable enforcement officers to differentiate easily the types of NFB service being provided by a vehicle, appropriate signs in a

standardised format will have to be displayed in all NFBs to indicate the service being operated. For vehicles subject to single / restrictive endorsement requirement, they will be required to adopt a livery system to show the type of service provided by the vehicles. As for existing vehicles, the operators concerned should be encouraged to adopt the livery scheme on a voluntary basis. The Administration will draw up details of the implementation in consultation with the trade.

(XIV) Ban Cash Payment On Board

29. It is noticed that unauthorised NFB operations usually accept payment in the form of cash or Octopus card by any member of the public. To help pre-empt operation of unauthorised service, payment on board will be banned for all NFB services, except for those international passenger services (A05) and residents' services (A06) approved by C for T. Cash or Octopus card payment on board without approval from C for T would not be allowed on new RS routes while such arrangement being adopted on existing RS would be reviewed, during the PSL renewal stage. Payment of fares must be made –

- (a) at designated selling locations approved by C for T; and
- (b) in forms of coupons, pre-paid tickets, monthly tickets or any other form as approved by C for T.

The details of the payment method will be stipulated in the schedule of service approved by C for T.

(XV) More Stringent Sanctions and Penalties

30. During consultation, the trade generally agree that in order to deter the operation of unauthorised services, sanctions against unauthorised services, especially for flagrant or repeated offenders, should be increased. In this regard, TD will review the current administrative sanctions handed down upon completion of inquiries for substantiated cases and inform the trade of the outcome of the review.

(XVI) Streamline Enforcement Procedures

31. As recommended by the TAC, common breaches of PSL conditions will be created as specified offences that are subject to fixed penalty ticketing system, e.g. not displaying the PSL plate or the stipulated service signs and collecting cash payment on board without C for T's authorisation. This can streamline enforcement procedures as ticketing actions can be made on the spot by police officers as well as upon referral by TD officers. The NFB trade agree with this measure but consider that TD should consult the trade before deciding what common breaches of PSL conditions would be subject to fixed penalty ticketing. The Administration will consult the trade in due course.

(XVII) Traffic Management Measures

32. To ensure that operation of authorised NFB services will not cause traffic obstruction and to tackle the irregularities caused by unauthorised NFB activities, traffic management measures will continue to be implemented. These will include regulating the picking up and setting down activities of authorised NFB services, imposing general traffic restriction to prevent the operation of unauthorised NFB services, etc.

(XVIII) Improve Regular Public Transport Services

33. TD will continue to improve regular public transport services where justified and plan for transport services at an early stage to cater for transport needs arising from new developments so as to forestall operation of unauthorised NFB services.

CONSULTATION WITH THE TRADE

34. The TAC and the Administration consulted the NFB trade throughout the review process, keeping them informed of the measures being contemplated and considered their views before arriving at the finalized proposed measures.

35. At the same time, taking into account the NFB trade's view that the proposed measures should not generate unnecessary administrative work and cost for operators, and minimise impact on the continuity of current legitimate business operation of the existing NFB operators, the Administration has taken on board their suggestions to adjust some of the proposed measures. They are recapitulated as below -

- (a) vehicles, the transfer of which will not entail a net increase in the NFB fleet, will not be subject to the single / restrictive endorsement requirement and can be granted with contract hire service (A08) endorsements if the vehicles had such endorsements before the transfer and the new owner applies for the A08 endorsement with supporting documents to justify the application;
- (b) if an existing operator cannot produce a valid contract at the time of expiry of his existing endorsements, he can apply for renewal of such endorsements any time during the validity period of their PSL with provision of supporting contracts, with a validity period of at least 3 months for the service;
- (c) instead of specifying the validity period of an endorsement in line with the supporting contract as proposed by the TAC, the existing arrangement of aligning the validity period of the endorsements with that of the PSLC will be retained;
- (d) a clear delineation of contract hire services (A08) requiring prior approval from C for T is proposed in paragraph 20, having regard to the views of the NFB trade that the regulatory regime should be easily comprehensible;
- (e) user groups' preference and full subsidisation by employers will be taken into account when processing new RS and ES applications respectively if the services applied for satisfy the principles proposed by the TAC and the NFB trade as set out at Annexes A and B; and

- (f) standard forms or a list of information required will be provided to NFB operators to facilitate compliance with the proposed measures to improve regulation of NFB services, e.g. keeping of daily operation records, amending the application forms to set out clearly the supporting documents required.

36. We understand that the NFB trade is very keen on controlling the increase in NFB fleet. However, we do not consider it appropriate to impose a cap on NFB fleet because it will restrict the flexibility in meeting the genuine needs of some service sectors which may require additional vehicles to meet demand due to their special circumstances. It may also lead to undesirable speculative activities and thus generate premium for PSL and NFB vehicles which will eventually increase the cost of NFB services and pass on to the passengers.

37. To better coordinate the change in NFB services with demand, the Administration will instead implement the package of measures as set out in paragraphs 6 to 18 above. We have also adopted stringent vetting to assess and vet every NFB application to ensure that the NFB fleet will not expand unnecessarily. As a result of these measures, the growth of NFB fleet has been successfully contained during the past 12 months. There was only an insignificant growth in the registered NFB fleet from 7,206 in 2003 to 7,212 in 2004. A graph showing the number of registered NFB fleet is at **Annex D**.

Annex D

38. The NFB trade has expressed that flexibility should be maintained for provision of contract hire services (A08). The present proposed measures will not affect the operation of genuine ad hoc contract hire services, which are the intended purpose of the contract hire (A08) endorsement. For A08 services of a more regular nature, we consider necessary for the operators to seek prior approved to ensure they will not go beyond the intended ad hoc nature of the services.

WAY FORWARD

39. The Administration considers that the recommended measures set out in paragraphs 4 to 33 will help coordinate the change in level of NFB services so that it would be more in line with changes in demand. This will help prevent excessive supply of NFB services in the market, thus minimising unhealthy competition both within the NFB trade and with other public transport modes. While applications for new services will be subject to stringent vetting, adequate flexibility is allowed in processing applications for renewal of PSLs and endorsements and replacement of vehicles. General principles for approving different kinds of NFB service applications have been established to facilitate NFB operators to plan their business.

40. Proposals to improve the existing regulatory control and strengthen efficiency of enforcement actions will help reduce unauthorised NFB activities. Abuses of the regulatory flexibility to provide services deviating from the NFB policy by some individual operators can also be curbed.

41. With the implementation of the recommended measures, it is expected that the operating environment for both law-abiding NFB operators and regular public transport service providers will be improved with a well-coordinated public transport system.

42. The Administration plans to implement as a package the three broad categories of measures set out in paragraphs 4 to 33. Measures that require amendments to PSL conditions will be implemented after consultation with the trade in fulfillment of the statutory requirement of giving the PSL holders 3-month advance notice before the amendments take effect. We will also continue to communicate with the NFB trade in the course of the implementation of the proposed measures.

ADVICE SOUGHT

43. Members are invited to comment on the proposed measures for enhancing the regulation of NFB operations.

Environment, Transport and Works Bureau
January 2005

**General Principles that should be Considered
in Processing Applications for
New Residents' Service**

Applications for **new residents' service** should be processed with due regard to the following -

- (a) the residents' service should facilitate commuters to connect to the nearby rail station or public transport interchange to avoid adding congestion to busy urban districts;
- (b) the residents' service should not pose a significant adverse impact on regular public transport services in the area concerned;
- (c) existing or planned public transport services in the area to be served by the proposed residents' service are inadequate or limited;
- (d) residential developments served by the proposed residents' service are distant from rail stations, public transport interchanges or major franchised bus stops or GMB stops and use of alternative services will result in an excessive number of interchanges; and
- (e) the residents' service will not operate in congested areas or via local busy roads and will not cause traffic congestion.

2. Preference of the user group will be taken into account if the proposed new residents' service meets all the principles in paragraph 1 above and also meets the following:

- (f) the residents' service is exclusively for residents of the development located in remote area; and
- (g) the origin of the residents' service is within the residential development; and
- (h) the residents' service terminates at the nearby railway station / PTI; or
- (i) the residents' service operates during odd hours.

**General Principles that should be Considered
in Processing Applications for
New Employees' Service**

For processing applications for **new employees' service**, the following factors should be considered:

- (a) the employees' service should be considered if:
 - (i) the service is fully subsidised by the employer; or
 - (ii) existing or planned public transport services in the area or during the period to be served by the proposed service are inadequate or limited; or
 - (iii) the workplace to be served by the proposed service is distant from rail stations, public transport interchanges or major franchised bus stops or GMB stops and use of alternative services will result in an excessive number of interchanges;
- (b) the employees' service should be to and from the workplace;
- (c) the workplace and/or destination of the employees' service are not within busy urban areas or congested districts and its operation will not cause traffic congestion;
- (d) passengers of the employees' service should be restricted to employees of the employer; and
- (e) the service should normally be provided to the employees of one employer at any one time.

**General Principles that should be Considered
in Processing Applications for Contract Hire Service
which require prior approval**

For applications for **contract hire service that requires prior approval**, the following factors should be considered:

- (a) services should be to the nearby residential developments or major public transport interchanges;
- (b) the proposed service should not cause or lead to traffic congestion;
- (c) if the service operates between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same areas, the service may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. Services between that particular location and substantially different destination areas may be allowed to operate, each subject to a separate 15-day maximum period if the services would adversely affect regular public transport services;
- (d) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the contract hire service can be longer and determined on the merit of each case; and
- (e) a contract hire service, if approved, should be subject to certain conditions such as routeing, operating hours, frequency and bus types. The operating hours of the contract hire service should generally tie in with the opening hours of the location involved, e.g. shopping malls or clubs.

No. of Registered Non-franchised Public Bus

