Proposal for a Bus Regulation (Scotland) Bill – SPT Response to Consultation

Committee: Strategy and Programmes

Date of meeting: 23 August 2013  Date of report: 26 July 2013

Report by Assistant Chief Executive (Operations)

1. Object of report

To request the Committee’s approval of SPT’s response to the consultation on a proposal for a Bus Regulation (Scotland) Bill. The response is attached at Appendix 1 and the deadline for responses is 30 August 2013.

2. Background

Iain Gray MSP is undertaking a consultation on his proposal for a Private Members Bill on Bus Regulation in Scotland, with a view to presenting the Bill before the Scottish Parliament later this year. Mr Gray believes that current regulatory arrangements for bus are failing people and communities across Scotland, and that the Scottish Parliament should make changes to remedy this situation, including through regulation.

3. Outline of proposals

The Bill proposed by Mr Gray seeks to provide transport authorities with greater powers to set service levels for local bus services, including a power to group profitable routes with non-profitable routes. This would enable transport authorities to ‘bundle’ these profitable and non-profitable routes and franchise them as a package, set a minimum level of service within the franchise agreed with the operator, and use local authority fleets to provide socially necessary services where there are gaps in provision.

The proposed Bill would also include new powers for the Traffic Commissioner for Scotland to impose financial penalties on operators who do not meet the terms of franchises, and transport authorities will also be able to seek redress for the cost of retendering routes where operators have ‘walked away’ from franchise agreements. Overall, the proposed Bill aims to provide scope for transport authorities to run services how they see fit. The proposed Bill would also remove the requirement on transport authorities to prove market failure before directly intervening in the bus market by giving them greater power over how services are run from the outset.

SPT’s response supports the principles behind the Bill and emphasises that undoubtedly, a more effective regulatory regime for bus could indeed deliver a more comprehensive, integrated and socially responsible transport network across Scotland. However, SPT’s
response highlights that more detail and clarity on the proposals is required, as dependent on the model chosen, it could mean significant cost to the public purse, could be open to significant – and lengthy – legal challenge, and could stifle investment and innovation by commercial bus operators.

SPT emphasises that its proposals – the ‘Ten Point Plan for Bus’ – could be a potential alternative and could provide the basis for improved bus services without the need for significant legislative change, could achieve improved value for money, and could maintain and grow a stronger partnership approach across the industry. SPT’s response also notes the importance and ongoing work of the national Bus Stakeholders Group, which is chaired by the Minister for Transport and has membership drawn from across public and private sector partners across the industry. SPT’s ‘Ten Point Plan’ continues to be a key discussion point within the Bus Stakeholders Group.

4. Conclusions

Mr Gray’s proposed Bill is a useful and timely catalyst for debate on the future of the bus market in Scotland. While supportive of the principle behind the proposed Bill, SPT’s response highlights potential issues with some of the proposals and emphasises potential alternative solutions which could achieve significant improvements for bus in Scotland.

5. Committee action

The Committee is requested to approve SPT’s draft response to the consultation on the proposed Bus Regulation (Scotland) Bill attached at Appendix 1.

6. Consequences

<table>
<thead>
<tr>
<th>Policy consequences</th>
<th>SPT’s response is in line with the RTS priority of a ‘Plan and provide a step change for bus services, standards and infrastructure’.</th>
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<tbody>
<tr>
<td>Legal consequences</td>
<td>None at present.</td>
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<td>Financial consequences</td>
<td>None</td>
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<td>Personnel consequences</td>
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<td>Social inclusion consequences</td>
<td>None</td>
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<td>Risk consequences</td>
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Name  
Title
Eric Stewart
Assistant Chief Executive (Operations)

Name  
Title
Gordon MacIennan
Chief Executive

For further information, please contact Bruce Kiloh, Head of Policy and Planning, on 0141 333 3740.
Appendix 1

30 July 2013

Iain Gray MSP  
Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Mr Gray

Bus Regulation (Scotland) Bill – Strathclyde Partnership for Transport (SPT) Response

SPT welcomes the opportunity to respond to the consultation on the Bus Regulation (Scotland) Bill. Our response to the consultation questions is attached at Appendix 1.

About SPT

SPT is the Regional Transport Partnership (RTP) for the west of Scotland and our area covers twelve local authorities and includes all or part of three Health Board areas, Greater Glasgow & Clyde, Lanarkshire and Ayrshire. SPT has an important role in coordinating the public transport network across the area and we work closely with our partner councils, the NHS and public transport operators to ensure that people across Strathclyde have the best possible access to healthcare facilities and to a full range of activities including employment, education, leisure, shopping, visiting family and friends. SPT also acts to promote active and healthy lifestyles through its travel planning service and programme of investment in walking and cycling. SPT also administers, on behalf of its partner councils, the Strathclyde Concessionary Travel Scheme (SCTS) which provides discounted rail, ferry and subway travel for elderly and vulnerable people. SPT supports socially necessary bus services across the west of Scotland, including MyBus demand responsive bus services, which provides transport for those people who find difficulty in accessing mainstream bus services. Many of the users of these services are vulnerable and rely on them to access healthcare in one form and location or another.

SPT: Delivering a Step-Change for Bus

Bus services remain, by far, the main public transport mode for people and communities across the west of Scotland, accounting for 77% of all journeys, with the market split into circa 93% commercially-operated / 7% supported by SPT. To this end, SPT has, over recent years, invested significant resources into delivering the Regional Transport Strategy Strategic Priority of ‘Plan and provide a step-change for bus services, standards and infrastructure’. Indeed, this investment can be quantified at around £200m capital and revenue over recent years. Key projects and initiatives delivered include capital infrastructure improvements such as modernisation and refurbishments of Hamilton and Greenock Bus Stations and investment in over 100 modern, efficient adaptable buses, as well as continuing to deliver core revenue activities such as supporting socially necessary bus services, school transport and the MyBus demand responsive transport service.
Appendix 1

In addition to the substantial investment undertaken in the bus network in the west of Scotland, SPT has with Renfrewshire, Glasgow and South Ayrshire Councils, and operators, delivered the first – and so far, only – Statutory Quality Partnerships (SQPs) in Scotland, demonstrating its commitment to working in partnership with public and private sector organisations to deliver positive change for bus for communities across Strathclyde. More recently, SPT, with Glasgow City Council, has secured Scottish Government funding for Fastlink, which will deliver a high-quality, modern bus system between the city centre and the New South Glasgow Hospital.

SPT’s response

In summary, SPT’s response supports the principles behind the Bill and emphasises that undoubtedly, a more effective regulatory regime for bus could indeed deliver a more comprehensive, integrated transport network across Scotland. However, SPT’s response highlights that more detail and clarity on the proposals is required, as dependent on the model chosen, it could mean significant cost to the public purse, could be open to significant – and lengthy – legal challenge, and could stifle investment and innovation by commercial bus operators.

We believe that our proposals – the ‘Ten Point Plan’, summarised in our response at Appendix 1 – could be a viable potential alternative which could provide the basis for improved bus services without the need for significant legislative change, could achieve improved value for money, and could maintain and grow a stronger partnership approach across the industry.

SPT would also highlight the importance and ongoing work of the national Bus Stakeholders Group, which is chaired by the Minister for Transport and has membership drawn from across public and private sector partners across the industry. SPT’s ‘Ten Point Plan for Bus’ is one of the key points of discussion at the Group.

SPT has also undertaken a preliminary investigation into ‘quality contracts / franchising’ as a way of delivering bus services where the commercial market is failing. At this stage, while acknowledging that significant further analysis would need to be undertaken to fully assess the costs and benefits of adopting some form of franchising model, there could be potential to deliver a more holistic and comprehensive bus network in specific areas or on particular corridors through some form of franchising should legislative change occur and appropriate, albeit potentially significant, funding be made available.

SPT welcomes reference within the proposed Bill to the important role of Community Transport (CT) as part of the wider public transport ‘offer’. SPT has formed the West of Scotland Community Transport Network which is a partnership between SPT and the community transport sector in the west of Scotland established to improve co-ordination, quality and best use of resources within the sector. SPT has funded many improvements in the CT sector in recent years, and will continue to work in partnership with CT providers at a local and regional level through the Network to help build the capacity of sector, provide training and information to CT operators, improve governance, develop and implement best practice and drive quality standards in CT.

SPT is supportive of the principle and much of the analysis contained in the Bill and we see this as an important catalyst for debate on the bus market in Scotland. SPT will continue to work with the national Bus Stakeholders Group to take forward our proposals outlined above which we consider to be practical, affordable measures which could be implemented in partnership with the bus industry. This approach takes into account the needs of passengers, the reality of public finances, and the market realities of the current system, where some areas have excellent bus services, but many communities do not have a service at all, or at best have a minimal service.
Appendix 1

We would, of course, be happy to meet with you to further discuss our response.

Yours sincerely

Eric Stewart
Assistant Chief Executive (Operations)

Enc: Bus Regulation (Scotland) Bill – Response by Strathclyde Partnership for Transport
Bus Regulation (Scotland Bill) – Response by Strathclyde Partnership for Transport

Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.

Yes, SPT supports the principles behind the Bill and emphasises that undoubtedly, a more effective regulatory regime for bus could indeed deliver a more comprehensive, integrated and socially responsible transport network across Scotland. However, we would highlight that more detail and clarity on the proposals is required, as dependent on the model chosen, it could mean significant cost to the public purse, could be open to significant – and lengthy – legal challenge, and could stifle investment and innovation by commercial bus operators. However, SPT believes that its ‘Ten Point Plan for Bus’ could be a viable potential alternative which could provide the basis for improved bus services without the need for significant legislative change, could achieve improved value for money, and could maintain and grow a stronger partnership approach across the industry.

1. What would be the main practical advantages of the legislation proposed? What would be the disadvantages?

The principle of the proposal to give transport authorities ‘greater control over bus services in their area’ is to be welcomed, as it is vital that, to ensure value for money, the public sector seeks a more active return for the significant capital and revenue investment it makes in the bus industry.

While welcome in principle, the proposal to enable transport authorities to ‘franchise’ routes through the bundling of profitable and non-profitable routes could be open to legal challenge as it is currently, in theory, not possible to ‘cross-subsidise’ bus routes. More detail and analysis on a ‘franchise’ proposal is required to ascertain the full costs, legal implications and benefits / disbenefits of such a regime.

It is worth remembering that, for many people, the current baseline for bus services could be classified as ‘poor’. In any new model which, in essence, would be publicly controlled, the responsibility for raising this baseline would lie with public agencies – in relation, for example, to services, quality and fares – and the revenue risk would pass to these bodies. This reality of raising the baseline from ‘poor’ to ‘satisfactory’ – never mind ‘high’ - could have significant cost to the public purse, and therefore, as previously mentioned, more detail, analysis and clarity on the proposals is required to ensure the most effective model is chosen.

The ability to set a minimum level of service is to be welcomed in principle, and Public Transport Authorities (PTAs) already have the power to do this for services they subsidise. However, whether within a ‘franchise’ (as noted above) or not, this proposal could have the unintended effects of stifling innovation by commercial operators and, potentially making the bus network inflexible to changing demands at short notice.

Greater powers for the Traffic Commissioner are to be welcomed in principle, as is the ability for PTAs to seek redress for the cost of retendering routes where an operator has walked away from any ‘franchise’ agreement. This is currently the case where an operator walks away from a service subsidised by the PTA. However, we would highlight that the TC should be properly resourced to accommodate any new responsibilities.
Particularly welcome is the scope for PTAs to have the flexibility within their area to have greater control over services as they see fit. The market realities of the current system are that whilst some areas have excellent bus services, many communities do not have a service at all, or at best have a minimal service, and wasteful competition remains a significant concern. Furthermore, the reference to a more effective utilisation of local authority fleets to fill gaps in service provision is broadly welcome, as SPT has been pursuing this agenda for many years, for example, through the purchase of adaptable and flexible vehicles which can undertake normal service work as well as specialised welfare trips. The respective PTA would require to take control over allocation of those fleets to remove current under-utilisation, and to ensure compliance with the prevailing regulatory regime.

Lastly, the proposal to remove the need to ‘prove’ market failure is to be welcomed, as the lack of clarity over the definitions of this have proved to be a significant hurdle in the potential implementation of Quality Contracts. As mentioned in the letter accompanying this response, the use of some form of Quality Contract / Franchise could potentially be beneficial in particular areas or routes within the west of Scotland, subject to caveats regarding funding and legal issues. However, the terms for justification for intervention by a PTA without proving market failure must be robustly demonstrated in order to avoid legal challenge.

2. In what ways do you envisage reregulation being used to improve bus services?

SPT would highlight the need to clearly define terms such as ‘franchise’, ‘agreement’ and ‘re-regulation’ as each of these have different meanings to different people.

‘Re-regulation’ – in terms of a reversion to the pre-Transport Act 1985 fully publicly-owned and operated bus industry – would be price prohibitive, although the opportunities presented by some form of ‘franchise’ or ‘agreement’ could be more suitable, dependent on the detail of the model chosen.

We believe that our proposals – the ‘Ten Point Plan’, summarised below, more detail available at [http://www.spt.co.uk/documents/op090312_agenda8.pdf](http://www.spt.co.uk/documents/op090312_agenda8.pdf) – could be a viable potential alternative which could provide the basis for improved bus services without the need for significant legislative change, could achieve improved value for money, and could maintain and grow a stronger partnership approach across the industry. Our proposals are also gaining traction within the work of the national Bus Stakeholders Group.

SPT's ‘Ten Point Plan’ for Bus:

1. To allow Public Transport Authorities (PTAs) – like SPT - to secure (or provide) bus services where there is clearly a need, even if it may be in conflict with the perceived commercial view of the operator.

2. The payment of Bus Service Operators Grant (BSOG) for new or varied registered mileage should only be made where that registration has been confirmed as not operating to the detriment of overall provision in that area.

3. Public Transport Authorities should be given powers to require compulsory participation in ticketing schemes that are introduced in their areas

4. The modifications to provisions on Statutory Quality Partnerships introduced in England and Wales in the Local Transport Act 2008 should also be introduced in Scotland.
5. The minimum period a service should operate as registered should be increased to 180 days. In addition, regulations should be made in accordance with S.46 of the Transport (Scotland) Act 2001 restricting dates on which local services may be varied in local areas.

6. Consideration should be given to compliance inspectors / vehicle inspection engineers employed by PTAs who would be trained and certified to VOSA standards, being given relevant powers equivalent to VOSA officers.

7. The Traffic Commissioner should consider not accepting local service registrations submitted by Community Transport groups (S. 22 permit holders) unless the registration is supported by the PTA and the group is registered on the Community Transport database. Additionally, a date should be set for the revocation of all existing Community Bus permits which may then be re-issued subject to application and compliance with minimum quality standards.

8. Where a bus operator enjoys an effective monopoly and may be seeking subsidy from the PTA, the PTA should be given access to service cost and revenue figures to satisfy themselves that the operator is not seeking excessive subsidy costs or acting in an anti-competitive manner.

9. Electronic Bus Service Registration (EBSR) to become the mandatory format for submitting bus registration particulars by 2014, and that such submissions are not accepted without the PTA acknowledging receipt of such information as prescribed in regulations.

10. The Public Service Vehicles (Registration of Local Services)(Scotland) Regulations 2001 should be amended such that the duty to inform the relevant authority(ies) of an application to register, vary or withdraw a bus service is replaced by a duty to consult.

3. How can community transport be better utilised to serve local communities and particularly low passenger volume routes?

Community transport (CT) is a vital part of the current and future transport ‘offer’ and plays a crucial role in ensuring many people and communities have the transport provision they require.

The establishment of effective governance, training and quality arrangements for CT in line with the West of Scotland Community Transport Network (WoSCTN) established by SPT would be a significant step forward for CT in Scotland. The WoSCTN provides a best practice model for governance, training, safety, efficiency and quality standards. More information on SPT’s views on CT and the WoSCTN is available in the following report: http://www.spt.co.uk/documents/rtp030513%20agenda8.pdf

4. Do you agree that the Traffic Commissioner should be able to impose greater financial penalties on operators who a) fail to meet the terms of the franchise or b) walk away from the franchise altogether?

Without question, the Traffic Commissioner should have greater powers regarding operators who fail to meet their obligations, but needs appropriate resource to do this. SPT, for example, assists the TC through undertaking service monitoring of compliance to registrations in the west of Scotland, as currently the TC is under-resourced to do this to the level required across Scotland. This would apply under the current regulatory regime and under franchising arrangements. However, more detail and analysis would be required to assess exactly what these powers should entail within the context of the proposals within the Bill.
5. What is your assessment of the likely financial implications of the proposed Bill to you or your organisation? What other significant financial implications are likely to arise?

Greater detail and analysis would be required in order to fully ascertain the financial implications of the proposed Bill. Whilst not permitted, the principle of ‘cross-subsidy’ has underpinned the performance of the bus market for many years, and therefore, cannot be, in isolation, noted as ‘new money’ or additional resource. Some form of franchise or agreement could be welcome, although more detail is needed to assess their full implications. It is known, however, in London, where a form of ‘franchising’ is in place, the cost to the public purse of funding for bus service provision per head of population £103.43 per annum. In comparison, SPT’s annual subsidy per head of population for supported bus services in the west of Scotland is £5.32 per annum. Therefore, while acknowledging that further analysis and detail would be required, the cost of implementing the proposals in the Bill could be significant, although these would need to be compared with the wider societal benefits that such a system could deliver.

SPT would highlight that any changes to the bus market could not simply be made on the basis of re-allocation of existing funds. As noted previously, to achieve a baseline of service which would be deemed ‘satisfactory’ by the public, this could involve significant new costs to the public purse. The implications of this based on any model chosen would need to be assessed to ensure affordability, best value and effective impacts.

It is also worth noting that there is the potential for significant – and lengthy - legal challenges from those negatively impacted by the proposals and the costs of dealing with these issues could again be significant.

6. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

As noted above, a more effective regulatory regime would undoubtedly deliver a more comprehensive, integrated, and socially responsible bus network, which in turn could only benefit all equality groups and excluded communities. Indeed, the impacts of an ageing population, and the fact that not everyone can access a bus – it is estimated that there are 300m unfulfilled bus journeys in Scotland each year – should be considerations as the debate continues on the future of the bus market.

However, as previously noted, filling these ‘gaps’ could come at significant cost, and these would need to be fully assessed and considered prior to the adoption of any new model.

7. Do you have any other comment or suggestion that is relevant to the need for or detail of this Bill?

SPT would welcome the opportunity to expand on its comments in this response.