

# Business and Regulatory Impact Assessment

## Title of Proposal: Implementing Part 3 (Bus Services) of the Transport (Scotland) Act 2019

### Purpose and intended effect

#### Background

The Transport (Scotland) Act 2019 (“the 2019 Act”) received Royal Assent on 15 November 2019. The Act is multi-faceted and contains provisions covering the National Transport Strategy, low emission zones, bus services, ticketing arrangements and schemes, travel concession schemes and parking (amongst others).

This partial BRIA is concerned with the implementation of the bus services provisions (i.e. local authority run services, Bus Service Improvement Partnerships, Local Services Franchising and the provision of service information). These provisions were (in large part) subjected to a [BRIA](#) when the Bill preceding the 2019 Act was introduced and accordingly, this partial BRIA should be read in conjunction with the previous one.

Bus patronage in Scotland (and the UK) has been declining since the 1960s with the trend continuing after deregulation and privatisation under the Transport Act 1985.

As a local service, buses work best when services are tailored to meet local needs and circumstances. While the Transport (Scotland) Act 2001 attempted to set a framework for the improvement of local bus provision, outcomes have not met expectations. Stakeholder views highlighted that elements of the legislation were unclear or over-burdensome thus limiting their uptake and practical effect.

The Transport (Scotland) Act 2019 addresses this by giving local authorities the flexibility to pursue partnership working (through Bus Service Improvement Partnerships - BSIPs), local franchising, or running their own buses – allowing local transport authorities to better respond to local needs.

The Act also includes measures to improve the information available to passengers, making bus travel a more attractive option, and provides for information to be supplied to local authorities on when services are deregistered.

#### Objective

Work is under way to commence and implement part 3 of the 2019 Act through secondary legislation and guidance using the powers granted to Scottish Ministers by the 2019 Act in relation to BSIPs, franchising and information on services. Public consultation is being conducted to gather information to support this activity.

#### Rationale for Government intervention

Implementation of part 3 of the 2019 Act will deliver on established policy to improve bus services and help arrest the decline in patronage. This is particularly important when set against the challenges posed by the global climate emergency which Scotland has responded to by committing to achieving a just-transition to net-zero greenhouse gas emissions by 2045.

Transport is the single biggest source of greenhouse gas emissions in Scotland responsible for accelerating climate change, with private cars forming the biggest proportion of contributors within that category.

## Consultation

### Within Government

Whilst developing the 2021 public consultation paper on implementing the 2019 Act, officials have engaged with colleagues in the Directorate for Local Government and Communities and Transport Scotland Bus, Accessibility and Active Travel Directorate.

Engagement has also taken place with the UK Government's Department for Transport (DfT), the Competition and Markets Authority (CMA), and local transport authorities both directly and through the Association of Transport Coordinating Officers (ATCO), as well as Regional Transport Authorities through this platform.

### Business

Engagement with bus operators, including through the Confederation for Passenger Transport (CPT), has been undertaken. A virtual workshop with stakeholders on 17 March 2021 was attended by CPT and a number of bus operators.

### Public Consultation

Ahead of the introduction of the 2019 Transport Bill, a full public consultation was conducted in 2017 with a total of 315 responses received from members of the public, local authorities, transport operators, RTPs, public bodies and other organisations. The majority of respondents felt that the proposals would impact on businesses, with bus operators in particular concerned about increased costs in terms of training, new infrastructure and administration regarding open data.

In developing this subsequent 2021 consultation, officials engaged with ATCO and conducted a virtual workshop with stakeholders on 17 March 2021 attended by a range of stakeholders including local authorities, bus operators, NGOs and bus user representatives.

To support the development of the above-mentioned regulations and associated guidance, the 2021 public consultation will seek information and views on the implementation of certain aspects of the 2019 Act as well as on this partial BRIA. The consultation will gather views from bus industry, CPT Scotland, ATCO, Scottish Traffic Commissioner, RTPS, CoSLA, MACS, Bus Users Scotland and the general public. We also intend to convene an ATCO working group to help shape any associated guidance.

## Options

The two options explored within this partial BRIA are as follows. This should be read in conjunction with the [BRIA](#) which was undertaken for the Transport (Scotland) Bill

**Option 1:** Do not Implement the bus provisions of 2019 Act

**Option 2:** Proceed to implement the bus provisions of the 2019 Act with further regulation on BSIPs (section 35), franchising (section 38) and information related to services (section 39); commence local authority run service provisions (section 34).

**Option 1: Do not implement the bus provisions of the 2019 Act**

This option represents the status quo. The options open to local transport authorities (LTAs) would remain unchanged and the policy aims outlined above would not be met.

### **Costs**

Under a “policy-off” scenario, reducing passenger numbers risks driving down revenues and making some services unviable, resulting in their cancellations and, in some cases, communities becoming isolated<sup>1</sup>. This is particularly relevant as public confidence in using public transport has been impacted by the COVID pandemic and if patronage continues to fall this could have an effect not only on operators revenues but may lead to continued calls for public subsidy.

### **Benefits**

None.

## **Option 2: Implement the bus provisions of the 2019 Act**

### **Costs**

The costs to LTAs of implementing each (or some combination) of the three options within the toolkit are difficult to estimate and are likely to be highly variable depending on their design and extent. Each of the options is considered in turn as follows:

#### **Local Authority run services<sup>2</sup>**

We expect there to be costs associated with implementation but these will vary depending on the model the LTA chooses. For example, Local Authorities could implement thorough an arms-length organisation or run services directly. Legislation is not prescriptive on how these provisions should be exercised and it is up to each LTA to decide how to implement it according to their own local circumstances.

There are a number of potential costs associated with local authority-run operations which can generally be considered in two parts - set-up costs and ongoing running costs. Set-up costs can vary significantly, particularly if authorities have to establish or acquire depots, vehicles, supporting buildings, equipment and services. On-going running costs are related to, for example, fleet maintenance and replacement, staff costs, fuel, insurance, tax and MOTs, risk and contingency. Labour costs represent the largest recurring cost of operating a bus service. According to the [CPT cost index](#), staff costs (including drivers, engineers, admin and other staff) accounted for 60.3% of operating costs. Variable costs such as fuel account for 13.3%, and costs such as insurance and other operating costs account for 2.5% and 12.7% respectively.

Average operating costs for local bus services in Scotland were around £2.03 per km in 2019-20. Over the past five years, operating costs have risen by 3 per cent more than inflation.

In 2019 – 2020, 49% (£326m) of bus operator revenue was from Local or Central government support - through concessionary travel reimbursement, Bus Service Operators Grant (BSOG) or supported services. In 2019 – 2020, 22.5% of vehicle

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<sup>1</sup> See Figure 6 p.25 “The bus circles of decline and growth” [national-transport-strategy.pdf](#)

<sup>2</sup> Source for data used in this section: [Scottish Transport Statistics No. 39 2020 Edition](#)

kilometres were on entirely subsidised services, with £57 million coming from Local Authority bus support.

An example of a local authority run service is Nottingham City Transport, the largest (largely, 82%) municipal owned bus company in England. In 2018, Nottingham City Transport provided an illustration of indicative costs associated with this and these are included below. It should be noted that costs would vary depending on the particular circumstances of the local authority run service and the model chosen by the LTA.

In this example, the town has a population of 140,000 - 150,000 and in addition to intraurban, also has one interurban service with the next nearest town.

The Company in this example is Limited and runs as a not for Profit/Dividend Company with generated profit would be reinvested back into the business in order for the Company to be self-sufficient. The Company would be run as a commercial entity with a target return of 5% - 7% (sufficient to provide for cost increases and fleet and infrastructure renewal) and not specifically to provide social need but it would seek to incorporate local political aspirations into its service provision were it could commercially afford to do so.

For the purpose of this illustration the fleet is made up of 112 vehicles; 78 of which would be Double Deck capable of carrying up to 86 customers and 34 would be Midi Buses capable of carrying up to 44 customers.

In relation to vehicles, a new EURO VI DD diesel bus would cost circa £270k to £300k. Biogas buses are considered cleaner than the diesel option above and their cost is generally 10% to 20% higher than the above cost while the cost of hybrid electrical is 30% to 40% higher. The cost of fully electric buses would be broadly 50% higher than diesel ones.

- Double deck vehicles 78 @ £285k                   =£22.23m
- Midi buses 36 @ £185k                               =£ 6.29m
- Total                   =£28.52m

In relation to land to house depot (or depots) required and associated infrastructure, costs vary greatly. [The 2017 GVA industrial intelligence report](#) outlined varying land costs ranging from £175k per acre (Glasgow) to £2.2m per acre in Enfield London. Excluding London, the average figure is £400k per acre if land is near urban centres. Included in this price is the depot maintenance and repair facility, office block, washing facilities, hard surfacing, specialist drainage, fencing gates and other associated infrastructure. Estimated costs for a completed facility are suggested to be closer to £4 million.

In relation to system support, ticket machines, real time arrival information, computers and associated infrastructure are required. Depending on how sophisticated the system is, costs could vary between £2m and £4m on this aspect of the service.

In relation to operational costs, a high level estimate is as below:

- Double deck vehicles 78 at £170k per annum   = £13.26m
- Midi buses 34 at £125k per annum               = £ 4.25m

Total = £ 17.51m per annum

In order to make the system self-sustaining, allowing for vehicle purchase, systems upgrades, infrastructure replacement etc., a minimum of £1.3m profit is likely to be required thus indicating a total turnover of the order of £19m.

A summary of total establishing indicative costs is provided below.

- Land £ 1.2m
- Depot construction £ 4.0m
- Depot Infrastructure £ 1.0m
- Vehicles £28.52m
- System support £ 3.0m

Total £37.72m

With ongoing costs of £17.51m

And

A revenue requirement of £19.0m

### **BSIPs**

Costs will depend on the area covered by the partnership plan, governance arrangements, as well as any BSIP-associated service standards set for the area covered by the plan and associated scheme or schemes.

### **Local Services Franchises**

For franchising, costs to LTAs will include the preparatory work in developing a business case, set-up costs associated with establishing a scheme, running costs, costs related to legal issues and challenges, transition costs for employees and provision for risk and contingency.

Costs will also depend on scheme design, in particular, the revenue model chosen ('gross cost', where the authority retains revenue, vs. 'net cost', where operators retain revenue and with it financial risks), and the size and scale of the franchise.

[The Greater Manchester Combined Authority \(GMCA\) recently announced](#) that buses in the GMCA area will be franchised. Transport for Greater Manchester (TfGM) will be responsible for running the franchise, spending approximately £23.5 million on the preparatory work for the franchise assessment with a funding strategy of the £135 million.

This compares to London's franchise, which costs £2 billion to design, build and maintain over the last 20 years.

In 2013, Jersey announced a new franchise contract with LibertyBus (a subsidiary to the HTC Group). In this franchise, revenue risk lies with the operators, who design the network themselves within broad parameters and objectives. Although the Government set out its specification, non-compliant bids were actively encouraged. Since the new contract began, passenger numbers are up by a third, five new routes

have been added, frequencies have improved, passenger satisfaction is up by five per cent and subsidy levels (£3.7 million) are down by £800,000.<sup>3</sup>

### **Information Relating to Services**

The 2019 Act provides for improved information provision between operators and LTAs when an operator decides to withdraw or amend a service to allow the LTA to assess the impact of the change and support decisions on consequential action. An arrangement along similar lines is currently in place on a voluntary basis and the cost of implementation is likely to be minimal.

#### **Benefits:**

Broadly positive environmental effects due to a potential modal shift from private car use to bus due to an improvement in the bus network. Potential social benefits through increased accessibility and availability of bus provision. Benefits associated with each of the toolkit's options are discussed further below.

### **Local Authority Run Services**

The ability to run their own services will give LTAs a higher level of control over parts of their local network. To run their own services, the LTA must be satisfied that the provision of such services will contribute to the implementation of their relevant general policies which could include tackling congestion, improving connectivity and decreasing air pollution with associated social and environmental benefits.

### **BSIPS**

In addition to the broad positive and environmental effects outlined above, benefits will depend on the implementation of the BSIP model. Partnerships have the opportunity to implement a wide range of service standards, including on the frequency of services, as well as ticketing, which could improve connectivity of the network, providing access to work, education and leisure opportunities, as well as improve the bus user experience. It is expected that the BSIP model will contribute to a better coordination of the bus network, including the implementation of facilities and measures on bus priority which can improve journey times and punctuality of services.

### **Franchising**

The updated franchising model in the Act increases the level of control which an LTA has over their local network. It allows them to design franchising arrangements to take account of local issues such as integration across transport modes and alignment with wider socioeconomic objectives as well as giving them a greater say over the services provided to passengers.

An appropriately designed franchise should also increase the stability of the network, giving LTAs certainty to invest as, following competition for the market during the tender process, there will be limited change to the network during the lifetime of the franchise. This certainty will also benefit bus operators taking on a franchise as operating risks are transferred from the operator to the LTA.

### **Information Relating to Services**

The provisions in the Act are designed to ensure consistent compliance across operators to facilitate more effective competition in the bus market through the

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<sup>3</sup> [bus-services-act-guidance.pdf \(bettertransport.org.uk\)](https://www.bettertransport.org.uk/bus-services-act-guidance.pdf)

sharing of information. At present, regulations require operators to notify the LTA before they submit an application to the Office of the Traffic Commissioner to amend, vary or cancel a service and a voluntary arrangement is in place whereby operators provide service information to the relevant local transport authority. The 2019 Act makes provision to formalise this process in terms of both the timescale for providing the information and the form and content of the information. This will improve consistency and better inform decision-making.

### **Sectors and groups affected**

The sectors most affected by any of the provisions within the consultation and subsequent regulations are local transport authorities, Regional Transport Partnerships, bus users, and current and prospective operators.

In addition, a potential increase in bus travel through improved bus services and associated reduction in car use could lead to reduced congestion on the roads and improved air quality, to the benefit of all road users.

### **Scottish Firms Impact Test**

Commercial bus companies are the sector most likely to be affected by these proposals and views have been sought from businesses, industry representatives and local government on the likely impacts.

There are around 295 bus operators in Scotland. Specific impact on these will depend on the operating model the local authority chooses, considering local needs.

### **Competition Assessment**

A number of competition concerns were raised in the 2017 consultation on these proposals and officials have engaged with the Competition and Markets Authority (CMA) to ensure they are fully addressed. It should be noted that the CMA already offers advice to LTAs on competition and partnership arrangements.

Provisions in the 2019 Act amend the existing competition test to ensure it is applied whenever a local transport authority is considering making or varying a partnership scheme. That reflects the potential impact that such a scheme could have on the bus services market in an area. Where a scheme would have a significantly adverse effect on competition and that effect cannot be justified by reference to the benefits to be gained, the scheme cannot go ahead. As a further competition safeguard, the CMA are mandatory consultees at a number of stages in the process of making and varying partnership plans and schemes, as well as, the making and varying of franchising frameworks and on the regulations relating to information for the public.

If a local authority choose to run their own service, they would also need to comply with relevant competition considerations.

### **Test run of business form**

No new forms are proposed at this stage.

### **Legal Aid Impact Test**

Legal Aid is not impacted by these proposals.

### **Enforcement, sanctions and monitoring**

The provisions do not create any new enforcement process or body although it does provide the Traffic Commissioner with powers in relation to services within BSIP

schemes. This gives the TC powers to cancel or refuse a registration where an operator does not comply with the agreed service standards.

In relation to franchises, local authorities will be required to establish a monitoring and audit process and final decision of any future franchise framework will be made by an independent panel, which is led by the Traffic Commissioner.

### **Implementation and delivery plan**

The commencement of s. 34 and associated guidance is expected to come forward in late 2021/ early 2022 while regulations and guidance on BSIPs (s. 35) and franchising (s. 38) will follow with a detailed timeline to be confirmed following this consultation.

### **Post-implementation review**

There are no specific plans at this point in time to review the impact of the legislation in relation to bus services. However, the provisions of the 2019 Act require the publication of a report on the effectiveness of BSIP and franchise scheme(s) within each 12 month period. In addition, the franchising provisions set out a rigorous evaluation process, which explore issues such as business considerations and the commercial impact.

The Scottish Government will continue to liaise with stakeholders on the development of the guidance and regulations, to support implementation and generally to monitor the performance of Scotland's bus services.

### **Summary and recommendation**

Option 2 is recommended. By proceeding with the implementation of the regulations and supporting guidance under the 2019 Act, LTAs will have a range of powers to hand that enable them to support or influence bus provision in their areas.

This is considered to be a partial BRIA as the introduction of specific measures on BSIPs or franchising will require to undergo rigorous evaluation processes, which explore issues such as business considerations and the commercial impact. Therefore further assessment of such considerations will take place if specific schemes are pursued.

### **Summary costs and benefits**

#### **Option 1**

No benefits (economic, environmental, social) identified. Costs to business and industry in the shape of bus companies would not change.

#### **Option 2**

The use of regulation-making powers in relation to BSIPs and franchising will ensure that the provisions of the 2019 Act are fully operational. Broadly positive environmental effects due to a potential modal shift from private car use to bus.

Potential social benefits through increased accessibility and availability of bus provision. However, these will depend on the implementation of these provisions.

The costs associated with LTA run services and BSIP will depend on the design and extent of the service or partnership, as well as any BSIP-associated service standards set for the area of the partnership.



The costs of an individual franchise will depend on its design, in particular, the revenue model chosen ('gross cost', where the authority retains revenue, vs. 'net cost', where operators retain revenue and with it financial risks), and the size and scale of the franchise.

### **Declaration and publication**

**I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.**

**Signed: Graeme Dey**

**Date: 24/06/2021**

**Graeme Dey**

**Minister for Transport**

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