

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE: 22 AUGUST 2013
CONSULTATION ON PROPOSED BUS REGULATION (SCOTLAND) BILL

1 Recommendations

It is recommended that the Committee:-

- 1 considers and approves a Council response to Consultation by Iain Gray MSP on a proposed Bus Regulation (Scotland) Bill as detailed in Appendix B to the report.**

2 Discussion

- 2.1 In May 2013, Iain Gray MSP, Member of East Lothian, launched a consultation exercise seeking views on a draft proposal which he has lodged as the first stage of introducing a Member's Bill in the Scottish Parliament. The proposed Bus Regulation (Scotland) Bill would provide transport authorities with greater powers to set service levels for bus services, including a power to group profitable routes with non-profitable routes before they are put out to tender with operators. A copy of the consultation document is available on the Scottish Parliament's web site (http://www.scottish.parliament.uk/S4_MembersBills/Final_consultation_Regulation_of_Bus_Bill_S4.pdf).
- 2.2 In proposing the need for additional transport authority powers, three examples of recent bus service cuts in East Lothian/Midlothian, Falkirk and Moray are cited in support of the argument for legislative change. In the case of East Lothian/Midlothian, First Group withdrew 20 routes and amended 8; in Falkirk First Group withdrew 6 routes; and in the case of Moray, the authority announced its intention to withdraw support for contracted socially necessary bus services. Given that the last example was instigated by the transport authority, it is difficult to envisage how additional powers to support bus services would have resulted in a different outcome.
- 2.3 The proposed Bill would provide transport authorities with additional powers and, in turn, greater potential control over bus services in their area. The principal power would allow transport authorities to franchise, at their discretion, profitable and non-profitable routes that had been 'bundled' together and, for example, specify a minimum level of service to be operated. The Bill would also include new powers for the Traffic Commissioner to impose financial penalties on operators who did not meet the terms of the franchise.

- 2.4 Under the current legislation, transport authorities can only exercise such control over all bus services in an area if a Quality Contract has been promoted. However to do so, the authority must demonstrate that 'market failure' has occurred. The proposed Bill would remove this very onerous requirement.
- 2.5 Both the current legislative framework and the one based on a franchising system have benefits and dis-benefits for bus service delivery, which are outlined in Appendix A. Franchising forms the basis of rail service delivery in Great Britain, bus services in many continental countries and bus routes in London. Most commentators would acknowledge the quality of bus services in London and associated patronage growth that has been achieved, however such success is tempered with significantly higher levels of support than elsewhere in Great Britain where bus services are deregulated.
- 2.6 The overall costs of individual franchises would be offset by 'cross-subsidy' from profitable routes (although there would be less opportunity for 'cross-subsidy' in more rural/sparsely populated areas) and franchising could provide the potential for more stable, higher quality, integrated/coordinated networks of bus services. However, it is considered that this could only be achieved through additional public funding (both additional support/subsidy costs and increased staffing/overhead costs to tender and administer franchises), which may not be available at a time of constrained public sector funding. Likewise franchising would allow transport authorities to specify fares and ticket products, however such a policy objective is likely to only be achievable at additional cost to the authority.
- 2.7 Aberdeenshire Council has actively promoted voluntary partnership working with operators, an approach favoured by the bus industry. Although, as with all approaches, collaborative working with the private sector has 'limitations', consistently high levels of bus user satisfaction have been achieved, with the most recent 2013 Bus Passenger Satisfaction Survey indicating that 90% of Aberdeenshire bus users are Very/Fairly Satisfied with the overall bus service. It is, however, acknowledged that this survey does not necessarily reflect the views of the general public.
- 2.8 The proposed Bill does not envisage a mandatory approach to franchising, leaving transport authorities the discretion to implement franchises when and where they see fit. The availability of such an additional policy tool could be beneficial in certain circumstances, however were such a power available, it is likely that there will be a significant rise in public expectations in relation to bus service delivery.
- 2.9 In consulting on the proposed Bill, Iain Gray MSP has sought responses to eight specific questions. A proposed Council response for the Committee's consideration is given in Appendix B, including proposed responses to the specific queries raised.
- 2.10 The Head of Finance and the Monitoring Officer within Corporate Services have been consulted and are satisfied with the contents of this report.

3 Equalities, Staffing and Financial Implications

- 3.1 An equality impact assessment (EIA) is not required as the report will have no differential impact on any of the protected characteristics. If progressed a Bus Regulation (Scotland) Bill would be the subject of an equality impact assessment as part of the Scottish Government's legislative process.
- 3.2 The report has no direct staffing or financial implications.

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Report prepared by Richard McKenzie
Date 5th July 2013

APPENDIX A

Potential Benefits and Dis-benefits of Bus Service Franchising versus the Current Procurement Arrangements for Bus Services

Current Tendering Regime	Franchising	Comments
Fares only specified by authority on supported services	Fares could be specified by the authority across the franchised network	Opportunity to address social inclusion and/or modal shift policy objectives. Any reduction in operator fares revenue would be reflected in the franchise cost.
Ticketing products only specified by authority on supported services	Ticketing products could be specified by the authority across the franchised network	Opportunity to address social inclusion and/or modal shift policy objectives. Any reduction in operator fares revenue would be reflected in the franchise cost.
Vehicle type and vehicle quality only specified by authority on supported services (with some indirect influence on the wider commercial network through inter-working of vehicles, and vice versa)	Vehicle type and vehicle quality could be specified by the authority across the franchised network.	Opportunity to provide consistent/higher quality vehicles and address environmental policy objectives through specification of low emission engines. Any increase in vehicle quality would be reflected in the franchise cost
Level of service only specified by authority on supported services (with the ability of an authority to specify/influence the level of service limited by the need to interwork with commercial services and avoid competition with commercial services)	Level of service across the franchised network potentially wholly within the control of the tendering authority.	Franchising authority could specify general level of service on individual routes, by for example time of day, or alternatively specify a detailed timetable. The latter approach would require a significant increase in staff resource.
Network stability. Given the dynamic nature of the commercial bus network it is often necessary to review and revise supported services in order to maintain connections and/or retain levels of service.	Network stability. With only one party in control of both 'profitable' and 'non-profitable' routes in any franchise area, a far higher level of network stability could be achieved.	Potential advantages of greater network stability include higher levels of customer confidence and more efficient/effective information provision. There is a potential danger that networks could 'stagnate' and respond more slowly to changing travel needs and demands in a regulated market, unless this recognised and addressed.

APPENDIX B

Draft Aberdeenshire Council response to the Consultation by Iain Gray MSP, Member of East Lothian, on a proposed Bus Regulation (Scotland) Bill.

Aberdeenshire Council welcomes the opportunity to provide comments on the proposal 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 before they are put out to tender with operators.

Aberdeenshire Council is a local transport authority serving a largely rural population of 227,000 in the north east of Scotland (with five Aberdeenshire towns having a population over 10,000)

In doing so the Council supports the provision of both fixed route and demand responsive local bus services through 108 contracts with commercial bus and taxi operators. The Council liaises with community transport organizations and funds seven groups through the Aberdeenshire Community Transport Initiative. The Council also operates approximately 70 'in-house' passenger transport vehicles providing mainstream and ASN home-to-school transport services, social work transport services and demand responsive transport (DRT) services as well as making these vehicles available for hire by voluntary organizations'. In 2012/13 the Council spent over £5 million in revenue monies supporting local bus and DRT services, community transport support, fares and ticketing projects, public transport infrastructure and bus service information and publicity initiatives.

Commercial local bus services within and to/from Aberdeenshire are predominately provided by Stagecoach Bluebird, along with a small number of other bus operators.

Notwithstanding the Council's role as a tendering authority, its approach to bus service delivery is predicated on partnership working with the bus industry. The Council participates in a voluntary Quality Partnership for public transport to enhance the quality of bus services in the north east of Scotland with Aberdeen City Council, Nestrans RTP, First Aberdeen and Stagecoach Bluebird and has actively pursued numerous partnership initiatives with both neighbouring authorities and bus and taxi operators in Aberdeenshire. Given the success of such voluntary collaborative working, the Council currently has no plan to enter into either a statutory Quality Partnership or a Quality Contract, though the former would be pursued if considered in the best interest of all partners and the travelling public.

The option of discretionary powers to tender for local bus services on a franchise basis would be welcome should the current local context change; however this is not an unqualified endorsement of the proposal as the Council has a number of concerns/reservations with this policy tool including: raised public expectations that could not be met without significant additional revenue funding commitments; and, the potential impact on small local operators.

In terms of the specific questions posed, Aberdeenshire Council would respond as follows:

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

Yes. The Council supports the general aim of providing transport authorities with the discretionary power to enter into franchise agreements with bus operators to deliver bus services. This position is however caveated with the concern that the introduction of such powers could lead to raised public expectations which, given current funding constraints, could not be met.

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

The two main potential advantages of the legislation would be the opportunity to provide a more integrated and a more stable bus service network. For example, addressing current difficulties associated with a lack of multi-operator ticketing and the high frequency of service amendments for short term commercial reasons. To achieve effective integration the opportunity of entering into cross-authority franchise agreements would require to be included within the legislation. Potentially other improvements could also be achieved through greater transport authority control of bus services for example in terms of vehicle quality, whilst greater network stability could, in turn, result in improved and/or more cost-effective information provision. The main disadvantage is that such improvements could only be achieved through potentially significant increases in public funding for bus services. Whilst there may be efficiency savings, for example associated with the removal of ‘wasteful on-the road competition’ on certain corridors, such savings will be negligible in rural areas such as Aberdeenshire and evidence from elsewhere such as London indicates that effective franchising requires high levels of public finance. There is also a danger that private sector innovation, for example in the areas of marketing and promotion, may be stifled unless franchise agreements can be concluded that retain some degree of operator flexibility and incentivisation.

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

As indicated under question 2 above, reregulation could bring greater service integration and greater network stability. Linked to the latter, transport authority financial support to maintain a given level of service would require to be higher but would be less subject to short term financial fluctuations. Higher vehicle quality could also be achieved, for example through the specification of low emission engines. Similarly lower fares could be specified to address social inclusion and/or modal shift policy objectives. However such improvements/actions would come at a cost to the franchising authority.

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

Parts of Aberdeenshire have an active community transport sector, elements of which are supported through the Council's Aberdeenshire Community Transport Initiative which provides funding for community transport services/organisations. It is difficult to envisage how the proposal to provide discretionary powers to transport authorities to enter into bus service franchise agreements would have any material affect on community transport.

5. 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?

Were a transport authority to enter into a franchise agreement with a bus operator then such a contractual agreement must have sufficient legal redress to account for such situations. Such legal provision should be incorporated in any franchise agreement and therefore whilst providing the Traffic Commissioner with the power to impose greater financial penalties is not necessarily inappropriate this should not be the only means of redress available to the contracting authority. Providing the Traffic Commissioner with the formal/statutory duty of arbiter in cases of dispute may be a more appropriate role.

6. 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?

Clearly if only discretionary powers were enacted, the Council could continue to promote partnership working and enter into contractual arrangements with operators on a similar basis as that currently practiced, with no consequential financial implications. However as indicated above it is considered that the availability of such discretionary powers will increase public expectations.

As the Council has no detailed financial/cost information on the commercial bus network within Aberdeenshire its is difficult to provide any robust/detailed predictions of the financial implications of entering into franchise agreements, not least as these would also depend upon the scale of the franchising, the level of service/quality specified in any franchise and the level of interest shown by prospective operators. However based on the experience from elsewhere significant additional costs would be anticipated (which could not be accommodated within local financial resources unless additional funding is provided by Central Government).

In addition to an envisaged increase in revenue support costs, additional overhead costs would be incurred with additional office and survey/compliance monitoring staff resource required were the option of franchising to be pursued.

Were 'smaller' local operators 'to lose out' on local bus service work this could impact upon their ability to undertake other passenger transport services on behalf of the authority, most notably school transport, and thus there is a potential negative and indirect financial impact on this related area of local authority service delivery.

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?

It is not considered that the proposed Bill would have any substantial positive or negative implications for equality. Clearly were a franchising approach to be pursued then an equality impact assessment would require to be undertaken as part of the franchising process and mitigating actions take if any negative impacts were identified. Although no substantial implications are envisaged, were higher quality services to be specified then minor positive impacts could ensue, for example through the provision of improved/consistent vehicle quality.

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

As outlined above, from a local perspective, Aberdeenshire Council sees no pressing need to introduce such legislation as it is considered that effective local bus services can, in general, be delivered through a combination of the existing tender regulations for socially necessary bus services coupled with effective partnership working with the bus industry. Given this and the likely financial implications of franchising the Council would only support the introduction of discretionary powers and would not support any proposal to introduce a statutory duty to enter into bus service franchise agreements.