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Transport (Scotland) Bill: Buses

Alan Rehfisch

This briefing provides an overview of bus service regulation in Scotland and sets out how this regulatory regime would be amended by the proposals in the Transport (Scotland) Bill.



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Executive Summary

Bus services in Scotland currently operate under a regulatory regime set out in the Transport Act 1985, as amended by the Transport (Scotland) Act 2001 and the Transport (Scotland) Act 2005. Part 2 of the Transport (Scotland) Bill proposes further amendments to this regulatory system, including provisions to:

1. Clarify the law regarding the provision of bus services by local authorities
2. Replace Bus Quality Partnerships with Bus Service Improvement Partnerships
3. Replace Bus Quality Contracts with Local Service Franchises
4. Require bus operators seeking to vary or cancel a local bus services to provide financial and patronage information to the relevant local transport authority
5. Allow Scottish Ministers to make regulations requiring bus operators, local transport authorities and the Traffic Commissioner to provide bus service information in a standard format (also known as open data) to allow for the provision of better service information to the public

Introduction

The Transport (Scotland) Bill ("the Bill") was introduced to the Scottish Parliament by Derek Mackay MSP, Cabinet Secretary for Finance and the Constitution, on 8 June 2018. Part 2 of the Bill deals with bus services.

This briefing summarises:

- The current regulatory regime for local bus services in Scotland
- Key trends in bus usage and costs
- The proposals set out in "Chapter 2: Bus Services" of the Bill
- Financial implications of the Bill
- Consultation on bus service regulation undertaken by the Scottish Government prior to the introduction of the Bill

The current regulatory regime for local bus services in Scotland

The following sections briefly summarises how local bus services in Scotland are regulated, funded and operated.

Who provides Scottish local bus services?

Bus services are generally provided on a commercial basis by privately owned bus companies, the major exception in Scotland being Lothian Buses – which remains in public ownership but acts as a commercial company.

There are roughly 200 commercial bus operators in Scotland, ranging from companies with only a few buses to those with several hundred. In addition, a number of bus services are operated by community transport providers in areas with limited, or no, suitable public transport.

Who funds Scottish local bus services?

Scottish bus operator revenue totalled £695 million in 2016-17¹. Fare revenue accounted for the £396 million (57%) of operators' revenue. Adjusting for the effects of inflation, this figure is the same as it was in 2007-08.

Financial support from the Scottish Government and local authorities accounted for £298m (43%) of operator revenue in 2016-17, which can be broken down as follows:

- concessionary travel reimbursement: £194 million
- Bus Service Operators Grant (BSOG): £53m
- payments from local transport authorities for supported services: £52m

It is worth noting that these figure do not quite tally, due to the rounding of specific elements

Figures published by [Passenger Transport Monitor](#) show that Scottish bus companies operated on an average profit margin of 8.6% in 2016, a reduction of nearly 1% on the previous year, largely attributable to decreasing revenue against static costs.

Who regulates Scottish local bus services?

The Traffic Commissioner is responsible for Public Service Vehicle (PSV) operator licensing and regulation. Licensed bus operators are required to register any new services with the Traffic Commissioner (setting out details of routes, stopping points and timetables), giving 42 days notice before starting the service. A similar procedure and notice period is in place for altering or cancelling a service. The Traffic Commissioner can

take enforcement action against an operator if it does not provide the service as registered.

The Traffic Commissioner has no role in setting or subsidising bus services.

What role do local authorities play in Scottish local bus service provision?

Operating bus services: The Transport Act 1985 limits local authority involvement in bus service provision to the subsidy of bus services deemed socially necessary that cannot be provided on a commercial basis, e.g. evening and weekend buses that serve hospitals or major employment sites. A local authority will normally run a competitive tendering exercise for the provision of socially necessary services, awarding the contract to the bidder that best meets the service specification.

Approximately 80% of Scottish local bus services are operated commercially with the remaining 20% supported by local authorities. This varies significantly across Scotland, with some rural areas being more heavily subsidised, owing to distributed populations, lower patronage and longer trip distances.

Provision of on-street bus infrastructure: Local authorities are also responsible for bus infrastructure, including bus stations and stops, bus lanes and other priority measures, and ensuring the provision of passenger information.

The Transport (Scotland) Act 2001 granted local authorities the ability to create statutory Bus Quality Partnerships and Quality Contracts, details of which are outlined below. The Transport (Scotland) Act 2005 allowed these functions to be transferred to regional transport partnerships (RTPs) – to date these functions have been transferred to three RTPs, Strathclyde Partnership for Transport (SPT), SWestrans and ZEtrans. These are known as ‘model III’ RTPs.

Statutory Quality Partnerships

A statutory Bus Quality Partnership is defined in the Transport (Scotland) Act 2001 as an agreement between one or more local authorities or model III RTPs, and bus companies operating within their area. It can also involve other parties, e.g. large employers, airport operators, and the Scottish Government where the scheme involves services operating on trunk roads. It can also involve financial or other contributions from third parties, such as property developers who are building along a bus corridor or bus stop manufacturers.

A Bus Quality Partnership Agreement requires each party to commit to deliver specific improvements aimed at securing better quality bus services in an area or along a bus corridor. Typically this involves both the introduction of better infrastructure, usually a function of the local authority, and better vehicles or service improvements, usually a function of the bus operators.

A local authority may only enter into a Quality Partnership Agreement if it is satisfied that the scheme will improve the quality of local bus services in the area and/or reduce congestion and pollution.

Prior to specifying and implementing a statutory Quality Partnership Agreement a local authority must hold a public consultation. Following the establishment of a Quality Partnership scheme the local authority must submit an annual report on its operation to the Scottish Ministers.

There has only been limited use of statutory Quality Partnerships, but quite a few voluntary arrangements - principally because the administrative burden of voluntary arrangements is less than for statutory partnerships. However, voluntary agreements do not benefit from enforcement powers available to local authorities who have agreed statutory Partnerships.

Bus Quality Contracts

A Bus Quality Contract Scheme, again defined in the Transport (Scotland) Act 2001, is a more formal arrangement than a Quality Partnership Agreement. A Quality Contract Scheme involves one or more local authorities, and/or model III RTPs specifying:

- what local bus services should be provided in the area to which the scheme relates
- the standards to which they should be provided (e.g. frequencies, fares)
- any additional facilities or services which should be provided in that area (e.g. bus shelters)

This is achieved through the creation of Bus Quality Contracts, which are agreements between the local authority and local bus service operators under which:

- the local authority grant a local bus service operator the exclusive right to operate the services to which the contract relates;
- that operator undertakes to provide those services on such terms as may be specified in the agreement.

No other local bus services may operate in an area or corridor that is subject to a Quality Contract Scheme, unless they are included within the Scheme. The Act does allow for specified services to operate within the designated area without being a party to the Scheme, these may include feeder services or longer distance coach services which may also be registered as local services. However, it is for each local authority to determine within the scope of the proposed Scheme what, if any, exclusions should be allowed.

A local authority can consider establishing a Quality Contract Scheme where it is necessary to implement their Local Transport Strategy or other relevant general policies and then only after undertaking a consultation exercise as laid down in the Act. Unlike Quality Partnership Agreements, Quality Contract Schemes must be approved by Scottish Ministers before they can be implemented.

To date, no Quality Contract schemes have been implemented.

Key trends in bus usage and costs

Bus passenger numbers have been on a downward trend in Scotland for several decades, as illustrated in the graph below. This has been mirrored elsewhere in the UK, except for in London - where local bus services are operated under a different legislative framework and benefit from a far higher level of subsidy than elsewhere.

Passenger journeys on Scottish local bus services (millions)

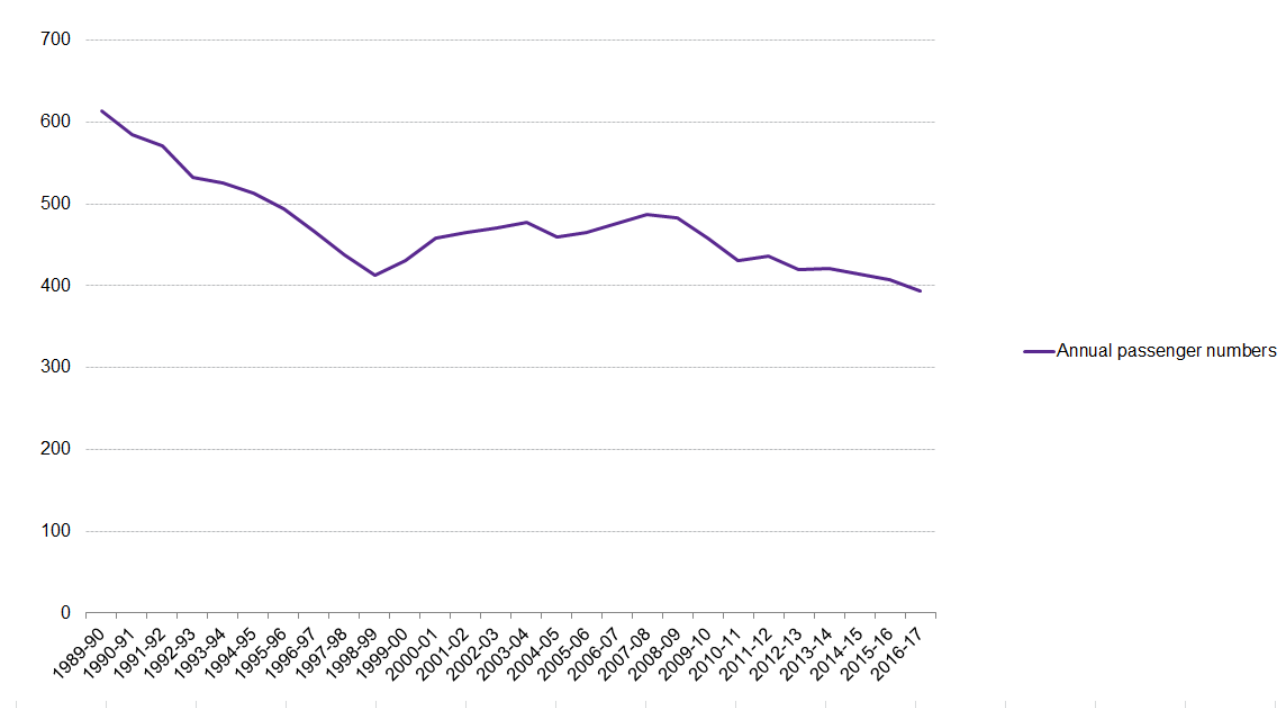


Table 2.2a Scottish Transport Statistics 2017

It is worth noting that the decline in passenger numbers is not evenly spread throughout Scotland, as set out in the graph below.

Passenger journeys by region for local bus services

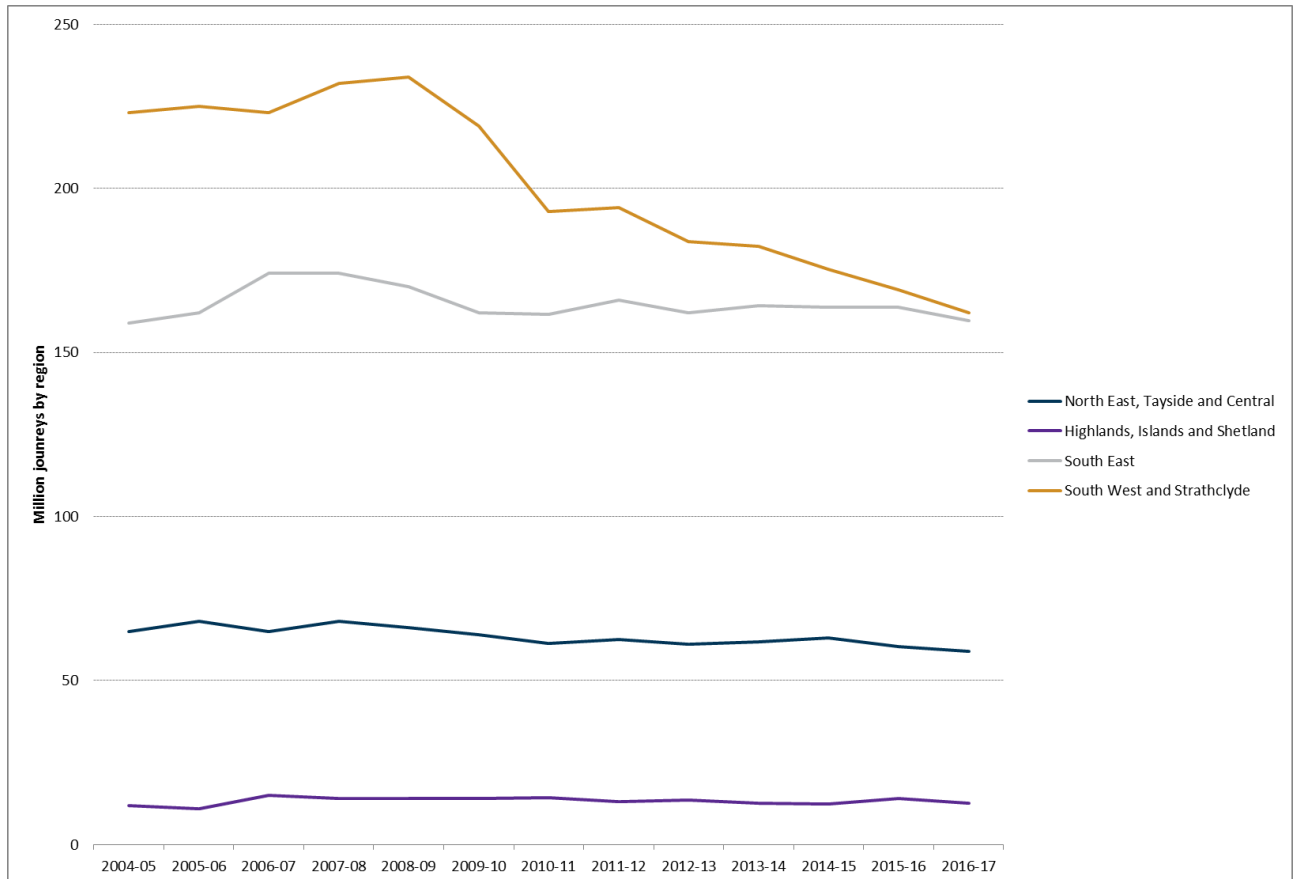


Table 2.2b Scottish Transport Statistics 2017

The Confederation of Passenger Transport (CPT) commissioned consultants KPMG to undertake a study into [Trends in Scottish Bus Patronage](#)² This looked at trends in Scottish bus patronage between 2011/12 and 2015/16. During this period there was a reduction in annual bus patronage of 27m trips. The study aimed to identify, and quantify, what was driving this decline. The study identified five broad areas that were influencing decisions to travel by bus, these were.

Socio-demographics: Population numbers have increased, especially in major urban areas - increasing the number of potential bus passengers. The population is getting older. Household sizes are falling. More young people in education or training. Increased proportion of people with direct access to a car linked to low motoring costs

Economic and labour market impacts: The structure of the labour market is changing. More self-employed workers and more people on flexible contracts. More working from home or across multiple worksites.

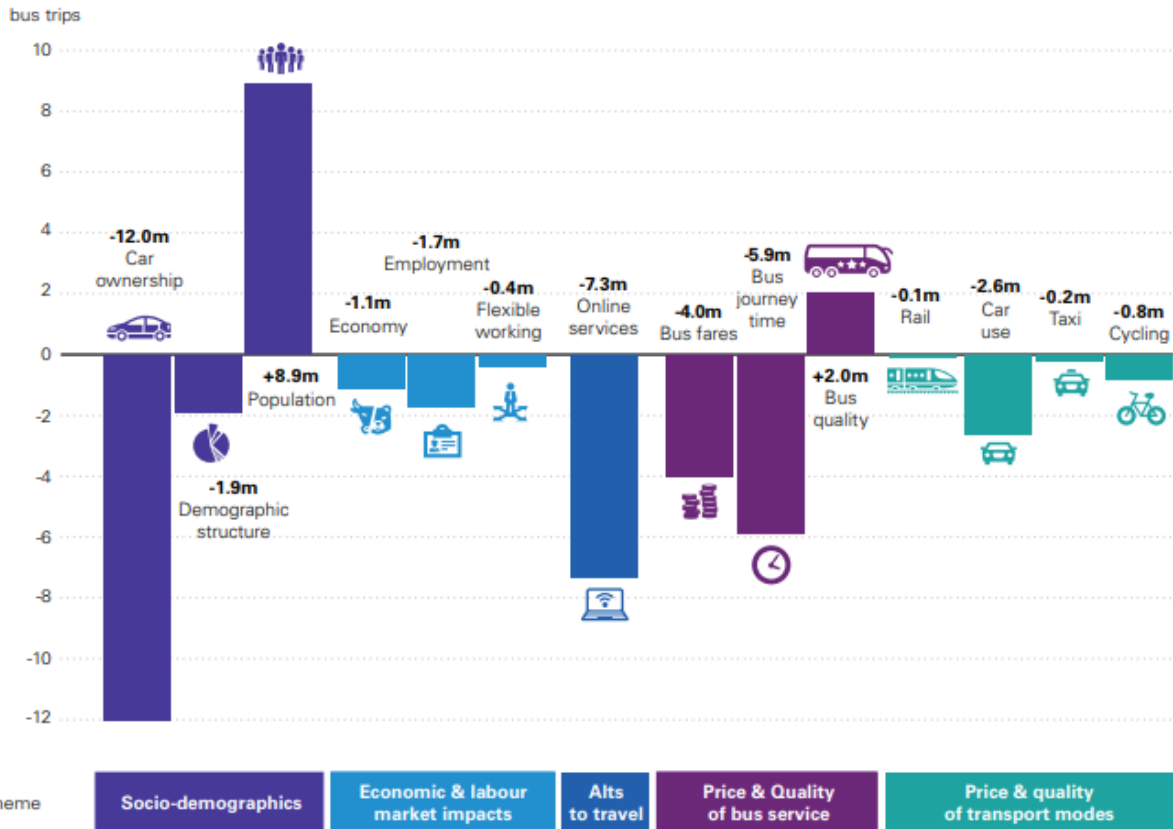
Alternatives to travel: Growth in online services and home delivery, reducing the need for travel.

Price and quality of bus services: Bus fares have risen at a faster rate than inflation, driven by increased costs and reduced government expenditure. Service miles have fallen, especially supported miles - all of which act as a disincentive to bus travel. However, vehicle and service quality have improved - making bus services more attractive.

Price and quality of transport modes: Generally, these improvements in other modes have a negative impact on bus patronage, including: Improved rail service quality and reduction in off-peak fares. Reduction in vehicle use costs from increased vehicle fuel efficiency and falling fuel prices. Significant increase in the number of taxi licences. Uber launched in Edinburgh and Glasgow in 2015. Material increase in the number of trips made by cycle

The chart below sets out an estimate of the impact that these drivers have had on bus patronage figures in Scotland.

Drivers of change



Trends in Scottish Bus Patronage, KPMG, 2017

These "drivers" were also identified as the key factors in bus usage in [earlier research](#) commissioned by the Passenger Transport Executive Group ³, which in seeking to answer "Where have the lost passengers gone?" concluded that:

“ To large extent the reduction in bus trips is simply that which would be expected as a result of rising car ownership and use. However, it is also likely that households dependent on buses will have reduced their use as average service levels have declined and real fares have risen. A shift to rail is another possible factor...However, it would be unwise to assume that the same users have shifted, except perhaps where tramway-style light rail systems offer similar accessibility for short trips (notably in Sheffield). There has been a substantial growth in office based employment, especially in the finance and business services sector, in a number of older industrial cities, as well as in London. This has helped to revive the central areas of such cities, as can be seen in Leeds, for example. This may have provided particular benefits for rail systems, which focus on the conurbation centre and the journey to work to a much greater degree than buses, and often serve more affluent suburban areas. Hence, there may be a net shift to rail, but this could be the result of new types of journey and user rather than a direct shift from bus. ”

The relative cost of bus travel has increased by a far higher rate over the last 30 years than any other mode of land transport, at more than double the Retail Prices Index (RPI), as set out in the chart below.

UK Retail Prices Index: Transport from 1987

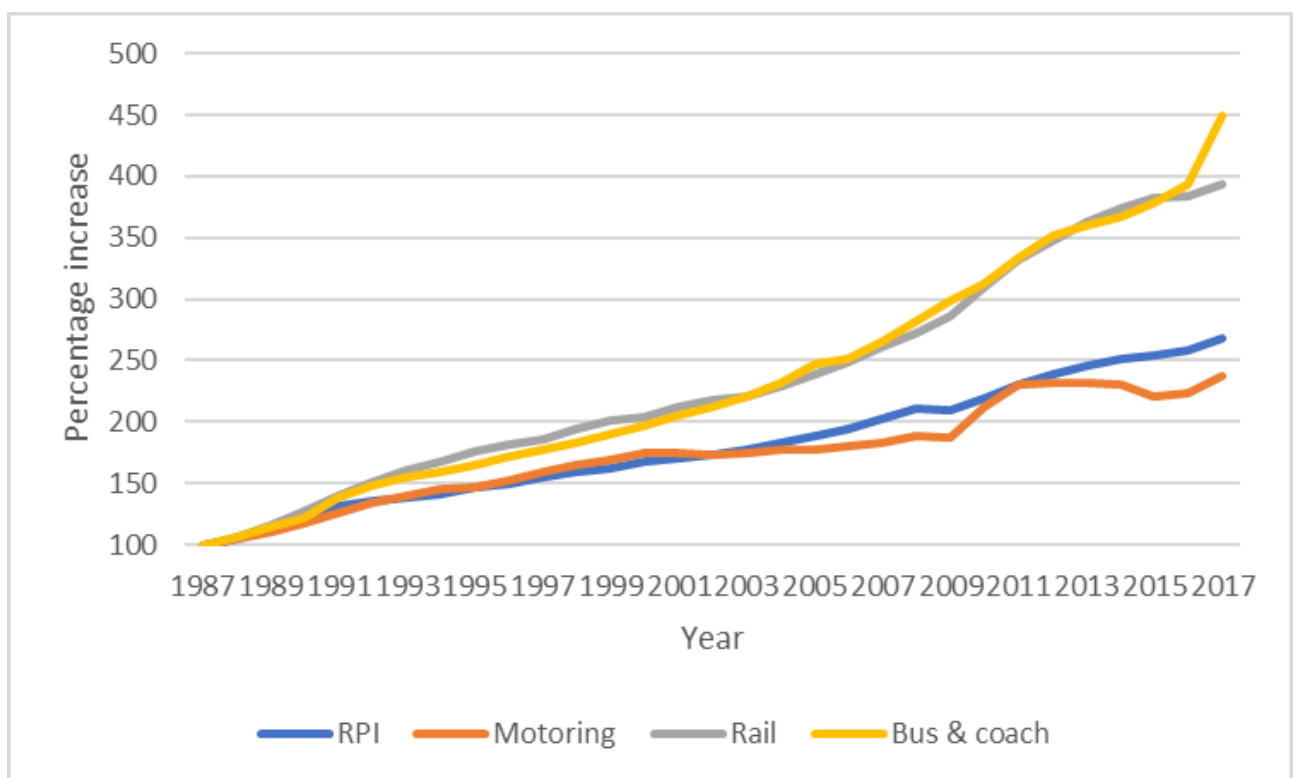


Table TSGB1308, Statistical data set Transport Expenditure (TSGB13), Department for Transport

Changes proposed in the Bill

The Bill proposes a number of changes to the powers available to local transport authorities (a function of Scotland's 32 local authorities and model III Regional Transport Partnership) to provide and regulate local bus services. In addition it also deals with the provision of information to local authorities by bus operators when they propose the variation or cancellation of a local bus service and the provision of information for the public (also known as Open Data).

The following sections provide an overview of the proposed changes. More information on the policy background to these proposals can be found in the Policy Memorandum ⁴ which accompanies the Bill. A detailed description of the purpose of each section of the Bill is set out in the Explanatory Notes ⁴.

Provision of local bus services by local authorities

The Bill would amend the Transport Act 1985 to allow a local authority or a company formed by a local authority or model III Regional Transport Partnership, to provide local bus services. This is subject to two criteria being met:

- the services are meeting an unmet public transport need.
- if commercially operated services are operating without subsidy, a council run service cannot compete with them.

It is worth noting that the proposals in the Bill would not affect the status of Lothian Buses (or any other local authority operated service), which is Scotland's only bus operator to have remained in continuous public ownership since the deregulation of bus services in Great Britain (outside of London) by the Transport Act 1985.

Bus Service Improvement Partnerships

The Bill proposes the abolition of statutory bus quality partnerships, described in an earlier section of this briefing, and their replacement with Bus Service Improvement Partnerships (BSIP). A BSIP will involve two key elements, a plan and a scheme:

Bus service improvement partnership plan (BSIP plan): A local transport authority may make a BSIP plan for all, or part, of its area. It should set out:

- the area and period to which it relates
- an analysis of local bus services
- policies relating to local bus services
- bus service quality and effectiveness objectives to be met during the period of the plan

- how the Bus Service Improvement Partnership scheme (see below) will help implement the policies and meet the objectives and describe the intended effects on adjacent areas
- arrangements for gathering bus user views on the implementation of the plan
- details of how and when the plan will be reviewed

Bus service improvement partnership scheme (BSIP scheme): A BSIP plan must also be accompanied by at least one BSIP scheme, which should set out:

- the area and period to which it relates
- service standards applicable to local bus services within the specified area (requirement(s) to be met by bus operators)
- facilities to be provided, or measures to be taken in support of the scheme (requirement(s) to be met by the transport authority)
- details of how and when it will be reviewed
- details of how it may be varied or revoked

A BSIP scheme may also specify exemptions from its requirements. A BSIP scheme can only be made if the local transport authority are satisfied it will help implement the BSIP plan or its more general policies, and will improve the quality of local bus services or reduce or limit traffic congestion, noise or air pollution.

Where a proposed BSIP plan would have a significantly adverse effect on local bus service competition and that effect cannot be justified by reference to the benefits to be gained, then it cannot go ahead. Local transport authorities must publish an annual report on the effectiveness of each BSIP plan. In addition, local transport authorities must have regard to any guidance issued on BSIP plans by Scottish Ministers.

The Bill sets out detailed procedures for the development, adoption, variation and revocation of bus service improvement partnerships in a new schedule that would be added to the Transport (Scotland) Act 2001. Full details of the procedures set out in this schedule are described in the explanatory notes which accompany the Bill.

One key proposal worth noting is that a local transport authority would not be allowed to proceed with a bus service improvement partnership proposal if a "sufficient number" of bus operators that would be affected by the proposals object to it during the initial consultation phase of a BSIPP and/or BSIPS. What constitutes a "sufficient" number is not defined on the face of the Bill. The explanatory notes which accompany the Bill states that:

“ What will constitute a sufficient number of operators to prevent a partnership proposal from progressing will be set out in regulations (see Part 4 of schedule A1). This reflects that there will be a wide range of possible circumstances that need to be covered, taking into account both the number of operators and their share in the market, and that there may need to be regular updates to reflect different trends in how bus services operate. ”

Local service franchises

The Bill proposes the abolition of bus quality contracts, described in an earlier section of this briefing, and their replacement with local bus service franchises. Bus service franchising could only come into effect once a local transport authority develops an overarching franchising framework and then enters into franchise agreements with bus operators, to provide the level of service set out in the framework.

A franchising framework can cover all, or part, of a local transport authority's area and must specify:

- what local bus services should be provided in the area to which the framework relates and the time period it will cover
- the standards to which they should be provided (e.g. frequencies, fares)
- any additional facilities or services which should be provided in that area (e.g. bus shelters)

The franchising framework is implemented through franchise agreements, which are agreements between the local transport authority and local bus service operators under which:

- the local transport authority grant a local bus service operator the exclusive right to operate the services to which the agreement relates, which can include payment by the authority to the operator
- that operator undertakes to provide those services on such terms as may be specified in the agreement.

No other local bus services may operate in an area subject to a franchising framework, unless they are included within a franchising agreement. The Bill would allow certain specified services to operate within the designated area without being a party to a franchise agreement, such as longer distance coach services which may also be registered as local services. However, it is for each local authority to determine within the scope of the proposed framework what, if any, exclusions should be allowed.

The process to be followed by a local transport authority wishing to make a franchising framework can be summarised as follows:

- prepare a proposed framework
- prepare an assessment of the proposed framework
- obtain a report from an independent auditor on the financial implications of the proposed framework
- consult on the proposed framework
- if necessary, modify the proposed framework and, where the modifications materially affect an aspect of the assessment, go through the process of assessment, audit and consultation again

- obtain approval to make the proposed framework from a panel convened by the traffic commissioner for that purpose.

Local transport authorities must publish an annual report on the operation of a franchising framework.

The Bill sets out detailed procedures for the development, delay, adoption, variation and revocation of a franchising framework. Full details of the procedures are set out in the explanatory notes which accompany the Bill. Scottish Ministers will also have powers to issue guidance on the exercise of these functions.

Although not set out in the Bill, it is worth noting that franchising can take two key forms:

Gross-cost franchising: the tendering authority pays an operator a fixed fee to provide services, retaining the passenger revenue (as in London).

Net-cost franchising: the operator retains all fare income, with the franchising authority paying a subsidy to the operator if the bus service is unprofitable and the operator retaining any profits if the service is profitable .

Information relating to services

The Bill would amend the Transport Act 1985 to allow a local authority or Regional Transport Partnerships that have been devolved certain local authority transport functions (known as model III Regional Transport Partnerships - currently SPT, SwesTrans and Zetrans), when it is notified by a bus operator of its intention to significantly vary or cancel a local bus service, to request the following information about that service:

- the number of passengers using the service, the journeys made by those passengers and the fares paid by those passengers (known as patronage data)
- the revenue obtained by operating the service (known as revenue data)

The information provided should cover the previous 12 months of operation or, if the service has not operated for a full 12 months, the period of operation. Where the operator does not provide the information (or does not provide it timeously) the Scottish Traffic Commissioner will be able to impose a financial penalty.

An authority's ability to request such information is subject to a number of restrictions:

- the information is required to allow the authority to ensure there is sufficient bus service provision in its area and the formulation of general policies in connection with that
- the information requested can only relate to the previous 12 months

An authority can share the information it receives with bus operators it considers likely to run a supported service which replaces or supplements the service that is being varied or cancelled by the operator - subject to meeting certain conditions, principally for reasons of commercial confidentiality of revenue data.

Provision of information for the public

Scottish Ministers would have the power to make regulations requiring those applying to register/vary or cancel a bus service, bus operators, local transport authorities and the Traffic Commissioner to provide information on bus routes, stopping places, timetables, fares and tickets. This would include real-time information and information on the operation of services in the past. Regulations would specify who such information would be provided to (limited to Scottish Ministers, local transport authorities and those directly involved in the provision of travel information to the public), when it should be provided and the format to be used.

The purpose of these provisions is to ensure that the public have access to free, high quality information on bus travel options in a standard format. The policy memorandum which accompanies the Bill indicates that "...it is proposed to ensure consistency as far as practicable with similar requirements being developed in England under powers in the UK Bus Services Act 2017 in order to minimise costs and make best use of shared systems, including those of the larger operators which provide services in both jurisdictions".

Financial implications of the Bill

The financial memorandum which accompanies the Bill ⁵ assesses the likely financial impact of the bus related provisions of the Bill on the Scottish Government, local authorities/regional transport partnerships and bus operators as follows:

Scottish Government: No significant financial impact.

Local authorities/regional transport partnerships: The financial impact of a Bus Service Improvement Partnership on an authority is dependent on the scope and nature of the individual partnership arrangements. However, based on cost estimates for Glasgow Fastlink scheme developed by SPT and Enhanced Partnerships that feature in the Buses Act 2017, the financial memorandum states that "... the estimated illustrative annual costs for a single local transport authority to develop and set up a BSIP is £23,000." This figure does not include any capital expenditure, e.g. new bus shelters or changes to road layouts.

Similarly, a local franchising scheme is highly context dependent. As there is no Scottish example of a Quality Contract or bus franchising scheme to use as a benchmark for estimating likely future costs the financial memorandum highlights figures produced by the Greater Manchester Combined Authority ⁶ for a future franchising scheme under the Buses Act 2017, Nexus (Tyne and Wear Passenger Transport Executive) ⁷ for a quality contract scheme under the Transport Act 2001 that was rejected in 2015, Department for Transport figures used during the passage of the Buses Act 2017 and costs identified in the Transport for Quality of Life ⁸ report Building a World-Class Bus System for Britain. However, the financial memorandum does not provide an estimate for the cost of establishing a franchising scheme under the provisions in the Bill, simply noting that:

" Engagement with local transport authorities has shown there is a widespread understanding that franchising is a relatively costly approach. Nevertheless, authorities still see merit in franchising where a partnership approach proves unachievable or fails. Ultimately, however, feedback from authorities emphasised that franchising would only be undertaken if it had a strong business case in which the full costs and benefits had been appraised. "

The financial memorandum identifies two distinct costs associated with a local authority choosing to establish a municipal bus company:

- set-up costs, including establishing or acquiring depots, vehicles, supporting buildings, equipment and services
- ongoing running costs, including fleet maintenance and replacement, staff costs, fuel, insurance, tax and MOTs, risk and contingency

The financial memorandum highlights figures produced by the managing director of Nottingham City Transport Ltd estimating the cost of setting up a hypothetical municipal bus company. This assumed that the company is situated in a town with a population of 140,000-150,000 (similar in size to Dundee) that needs to purchase all infrastructure and vehicles. It assumes a fleet size of 112 vehicles, mainly double-deckers, running a typical urban 24 hour, seven days a week all-year service with a 10-minute peak time service

frequency. The one-off set-up costs were estimated at £34.4m with annual operational costs of £17.5m. The financial memorandum notes that:

“ Ultimately, any particular scheme to pursue local authority-run buses would need to be carefully examined in terms of its business case to consider and value the potential benefits relative to costs.”

Bus operators: The financial memorandum does not provide any estimate of the likely costs of the Bill's bus related proposals on operators. Operators did note that meeting the requirements of a BSIP may require up-front investment, that may only be recouped over time, and only then if passenger numbers rise.

Operators indicated that bidding for franchises has cost implications and that franchising could reduce profit margins for winning bidders required to meet high service standards and have significant financial impacts on losing bidders and their employees.

The financial memorandum indicated that the impact of local authority provided services on commercial operators was difficult to assess. However, there could be an impact on operators who would have provided subsidised services under contract to a local authority, that will no longer have the opportunity to bid for such work.

Consultation prior to the introduction of the Bill

The Scottish Government ran a consultation [Local Bus Services in Scotland – Improving the Framework for Delivery](#)⁹, which was open for comment between 13 September 2017 and 5 December 2017. The consultation posed 18 questions under the headings:

- partnership
- local franchising
- transport authority run bus services
- open data
- other

The Scottish Government published [Bus Services in Scotland - Improving the Framework for Delivery Analysis of Responses to the Consultation](#)¹⁰ in March 2018. 316 responses were received, of which 254 were from individuals, 23 from local authorities, 10 each from transport operators and other public bodies, 7 from regional transport partnerships and the remainder from other representative or industry groups.

In general, a (sometimes small) majority of respondents were supportive of the proposed changes outlined in the consultation, although this support was often subject to caveats and often groups of respondents thought the proposals either went too far (often in relation to interference in the operation of the market) or not far enough (often in meeting the needs of passengers).

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