

**ITEM No ...7.....**

**REPORT TO:** CITY DEVELOPMENT COMMITTEE – 11 DECEMBER 2017

**REPORT ON:** RESPONSE TO LOCAL BUS SERVICES IN SCOTLAND – IMPROVING THE FRAMEWORK FOR DELIVERY CONSULTATION

**REPORT BY:** EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 436-2017

**1 PURPOSE OF REPORT**

1.1 This report details the Council's response to the Transport Scotland consultation 'Local Bus Services in Scotland – Improving the Framework for Delivery'.

**2 RECOMMENDATION**

2.1 It is recommended that the Committee approves the response attached in Appendix 1.

**3 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications arising from responding to this consultation.

**4 BACKGROUND**

4.1 The Transport Act 1985 which deregulated the bus industry has been the principal legislation that governs the operation of local bus services in Scotland for the last 30 years. Many observers have concluded that the current legislative framework no longer serves the best interests of the travelling public and that commercial decisions made by bus operators are determining the availability and scope of bus services that are so vital to local communities.

4.2 In recognising this demand for change, the Scottish Government has committed itself to introducing legislation during the current parliamentary session that will seek to change the balance of power and give greater control and influence to transport authorities (Councils and Regional Transport Partnerships) and in turn to local communities.

4.3 Transport Scotland has identified a number areas where it believes change can be effected and has issued a national consultation seeking views on their proposals for change. The proposals cover four main areas:

- 1 Partnerships
- 2 Local Franchising
- 3 Transport Authority Run Bus Services
- 4 Open Data

4.4 The proposals around partnership working as described in the consultation paper are considered to be overly bureaucratic, with too many checks and balances and too many opportunities for bus operators to withdraw from the process. Dundee City Council is determined to pursue long term, two-way partnership working with bus operators who are committed to collaboration and serving the interest of the city.

4.5 The proposals around local franchising are of interest but again there is a concern expressed in the response that, as described in the consultation paper, the powers given to transport authorities are unlikely to be used. The responses advocates developing the idea of 'powers of direction' that would give transport authorities greater control without the requirement for full franchising.

4.6 The Council supports the principle of giving local authorities like Dundee City Council unambiguous powers to operate bus services for its local community - either directly or indirectly through an arms-length company. Legislation should remove the historic restrictions that have inhibited Councils from intervening in commercial bus markets.

4.7 The Council believes that the sharing of data, including punctuality figures, financial data and patronage data is important in helping inform strategic decisions that will impact on the bus industry. The Council supports legislation that compels bus operators to share this data.

## **5 POLICY IMPLICATIONS**

5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

## **6 CONSULTATIONS**

6.1 All members of the Council Management Team have been consulted and are in agreement with the contents of this report.

## **7 BACKGROUND PAPERS**

7.1 None.

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NHG/JB/MS

30 November 2017

Dundee City Council  
Dundee House  
Dundee

## APPENDIX 1 - LOCAL BUS SERVICES IN SCOTLAND – IMPROVING THE FRAMEWORK FOR DELIVERY

### Consultation Questions

The consultation questions are listed below. Respondents are asked to give an answer to the questions put on our policy proposals, this is typically to say whether you agree with them or not, and to explain that answer in a comment. There is a separate section at the end which looks at likely impacts.

### Partnerships

**Question 1** - Do you think that legislation (either via the existing SQP model or another) is required to secure the benefits of partnership working?

Please answer Yes , or No .

Please explain your answer to this question:

In theory, it should be possible to secure the benefits of partnership working between transport authority and bus operator(s) through a non-statutory approach where positive relationships are allowed to develop. Experience would show that voluntary partnerships have often failed when the individuals driving the partnerships leave their roles within their respective organisations. In a voluntary model, frequent changes of management tends to result in reduced levels of commitment and loss of momentum. The introduction of revised legislation to strengthen the principles of partnership working and secure the continued participation of all partners is welcome.

**Question 2** - Do you feel that statutory Quality Partnerships as defined in the Transport (Scotland) Act 2001 provide the right framework for partnership working?

Please answer Yes , or No .

Please explain your answer to this question:-

The absence of successful SQPs strongly suggests that current legislation has failed to deliver its intended result. There is an overly bureaucratic process that has stifled the desire of local authorities to pursue SQPs despite perceived shortcomings of the local bus network. The flexibility of the SQP is relatively limited and does not usefully extend to agreements on frequency, routes and fares. In this respect a new framework for partnership working could deliver more.

It is also noted that the expectation on the transport authority to invest in and deliver improved bus infrastructure has also inhibited the use of SQPs as a tool during a prolonged period of financial constraint.

**Question 3** – Do you agree with our proposals for Service Improvement Partnerships?

Please answer Yes , or No .

Please explain your answer to this question:-

The proposals for the creation and use of Service Improvement Plans appear to be complex and start on the basis that through a joint review of the local bus network, a shared understanding and common ground will be found between partners. While a shared ambition of improved bus services, higher levels of passenger satisfaction and increased patronage will be common to all partners, the measures to be adopted to achieve that goal will be debated. If the intention of the legislation is to give greater power to transport authorities to shape the local bus network in their communities (in order to address issues of congestion, air quality, connectivity and social isolation) then the balance of power within the partnership should be tipped in favour of the transport authority.

Transport authorities may not have the capacity to undertake the preparatory work required to deliver a Service Improvement Plan (SIP) or lead a joint review and analysis of a multi operator bus network and then develop a draft Improvement Scheme. Where resources are required and costs incurred, these must be shared equitably among partners. This should give partners greater ownership over the SIP and lessen the likelihood of the operators expressing a negative view of the Improvement Plan and Scheme.

As the proposals stand, with the transport authority being the lead partner in its drafting, it is possible and likely that bus operators may perceive the SIP as a restriction or imposition on their commercial freedom and may be disinclined to give it their support.

In summary, there is concern that the approach described in the proposals sets too much responsibility/burden/risk with the transport authority and as a consequence SIPs would suffer the same fate as SQPs and simply be left on the shelf.

**Question 4** – If a new form of statutory Partnership is introduced, do you agree that statutory Quality Partnerships as defined in the Transport (Scotland) Act 2001 should be replaced (i.e. they would no longer be available as a tool for LTAs)?

Please answer Yes , or No

Please explain your answer to this question:

If a new partnership framework is delivered by legislation it would seem appropriate that it replaces the SQP as defined in the 2001 Act.

### **Local Franchising**

**Question 5** – Do you agree that local authorities should have the power to franchise bus services (either via Quality Contract or another system)?

Please answer Yes , No .

Please explain your answer to this question:-

The Transport Authority's control and influence over the shape of the local bus network should be strengthened. Dundee has a commercial operating environment with bus operators competing to offer their services to a healthy bus market. However, even in a city with low levels of car ownership and no rail or tram network, the bus provision is perceived as inadequate by many - and there is desire for better. Franchising may be seen as a way to bundle the profitable routes with the socially necessary routes that don't make profits. Cross subsidy, through franchising, could see a more equitable service being delivered across the city.

An alternative to franchising, but still giving the transport authority greater powers to shape bus services would be the 'power to direct' bus operators to incorporate changes into their commercial networks. It is proposed that further work should be undertaken to consider how legislation can be drafted to offer transport authorities the powers to have input into the routes and frequencies of commercial services without the need for the full franchising model. This approach may allow bus operators to continue their general control of commercial activity while giving some of the design responsibility away to the transport authority and community. Effectively, 'a strings attached' commercial environment.

**Question 6** – Do you agree that the existing Quality Contracts require change to make franchising a more viable option?

Please answer Yes **X**, or No .

Please explain your answer to this question:

The absence of QCs in Scotland would strongly suggest that the power to franchise bus services must be reformed. Before a transport authority embarks on what would prove to be a very challenging and resource intensive journey, it must have confidence that the destination can be reached. The current Quality Contract legislation is so protracted and subject to challenge that it is unsurprising that transport authorities have not used this power to take franchising forward.

**Question 7- Considering the information on our proposal on pages 32-36**

**Question 7(a)** – Do you think that there should be any consent mechanism for an authority to begin the process of assessment for franchising?

Please answer Yes , or No **X**

Please explain your answer to this question:-

No, we take the view that transport authorities should be free to assess for franchising without seeking external consent. Approval through committee (elected members) would be an appropriate form of consent.

**Question 7(b)** – Do you think that there should be a requirement for independent audit of the business case for franchising?

Please answer Yes **X** , or No .

Please explain your answer to this question:-

There is value in an independent review of any assessments but we would observe that the delivery of better bus services cannot simply be measured in patronage numbers or revenue taken. There are many factors that are difficult to quantify and are contestable – increased social connectivity and tackling social isolation, improved air quality, fairness, sense of pride in a city and its bus network, improved communications.

We would question the merits of undertaking an assessment of an outline business case that would seek only to measure empirical data without quantifying the measure of change that might be realised through a new delivery model.

**Question 7(c)** – Do you think that there should be an approval process beyond that of the local authority itself, before franchising can take place?

Please answer Yes , or No **X**.

Please explain your answer to this question **including (if yes) what kind of approval process:-**

We take the view that further scrutiny and approval is not required and that this additional stage would prove to be an unnecessary impediment in delivering local franchising. The report of any independent audit, including costs and risks, would be shared with elected members responsible for taking any decision to franchise a bus network.

### **Transport Authority Run Bus Services**

**Question 8(a)** – Do you think that transport authorities (including ‘model III’ RTPs) should be able to directly run bus services?

Please answer Yes , No .

Please explain your answer to this question:-

We believe unambiguous legislation in this area is welcome.

**Question 8(b)** – Please describe the circumstances in which this might be appropriate:-

There are areas of Dundee, that bus operators have made clear can no longer be offered a commercial service. The power to run bus services would give the transport authority the opportunity to fill the gaps in a commercial market with its own in-house fleet of vehicles and achieve better value for money than can be achieved through procurement of bus services from a limited marketplace.

**Question 8(c)** – What, if any, safeguards do you think should be put in place to ensure that no operator has an unfair advantage in a deregulated market?

Please explain your answer to this question:-

No further safeguards are required. It should be assumed that a transport authority will only act in the best interest of its passengers.

**Question 9(a)** – Do you think that transport authorities (including ‘model III’ RTPs) should be able to set up arm’s length bus companies to operate local bus services?

Please answer Yes , No .

Please explain your answer to this question:-

It is difficult to envisage the establishment of an arm’s length bus company by a transport authority from scratch but it is possible that a bus operator becomes available for purchase and the transport authority should not be denied the opportunity of acquiring that operator.

**Question 9(b)** – Please describe the circumstances in which this might be appropriate:-

Were an existing bus operator to become available for purchase, it would be appropriate for the transport authority to view itself as a potential purchaser.

**Question 9(c)** – What if any safeguards do you think should be put in place to ensure that no operator has an unfair advantage in a deregulated market?

No safeguards are required. It should be assumed that a transport authority will only act in the best interest of its passengers.

**Question 9(d)** – What, if any, checks and balances do you think should be put in place for a transport authority looking to set up an arms’ length company to run buses? Please explain your answer to this question.

A transport authority would have its own checks and balances undertaken by its internal auditors, senior managers and its elected members and there is no requirement for further external scrutiny of the transport authority’s decision.

**Open Data**

**Question 10** – Do you agree with our proposals to require the operators of local services to release open data on routes, timetables, punctuality and fares in a specified format?

Please answer Yes , No .

Please explain your answer to this question:-

Route and timetable information is already required as part of the registration process and it would seem appropriate to ensure that this information is readily available to all parties.

Punctuality data is not currently readily available and we would like to see this made publicly available in a format that distinguishes between services and time periods.

78% of Service 7 journeys arrive at timing point X on time (AM Peak)

90% of Service 7 journeys arrive at timing point Y on time (Sundays)

Fares data is again generally available but there is merit in ensuring that this is a mandatory requirement placed on bus operators.

**Question 11 (a)** – Do you think that data provided by operators should be stored in a central data hub?

Please answer Yes , or No .

Please explain your answer to this question:-

This information should be stored centrally but must also be made available locally at the request of the transport authority.

**Question 11(b)** – if you do not support the use of a central data hub how do you think data should be stored/ made available? :-

**Question 12** – Do you support proposals for transport authorities to have the power to obtain, information about revenue and patronage of services being deregistered, and where appropriate disclose this as part of a tendering process?

Please answer Yes , or No .

Please explain your answer to this question:-

This requirement has already been agreed in a code of good practice associated with the legislative changes to the registration process that were introduced in January 2016 but further work need to be undertaken to clarify the detail and agree the quality of information that is provided to transport authorities and the timescales for when this information should be provided. Making this a mandatory requirement through legislation would be beneficial.

## Other

**Question 13** – Please provide any other comments or proposals around the regulation of bus services in Scotland that were not covered in the above questions.

We are concerned that as the proposals stand, there is a risk that legislation will repeat the mistakes of the 2001 Act and introduce powers that are not used by transport authorities because they are simply too time-consuming and risky to embark upon.

We support those elements of the proposals that seek to shift the balance of power of decision making towards the transport authority. The 1985 Transport Act and the bus operating environment it created is not capable of delivering the full range of public transport services that a city like Dundee needs. As demand for bus declines, often due to reasons that are outwith the control of bus operators, the commercial market is contracting and concentrating only on profitable routes and gaps in the wider bus network increase. The socially necessary services, funded by the public sector, are also contracting as transport authority budgets are reduced. There are profits to be made in delivering bus services but there is a perception that these are not being used to support the communities from which those profits are made.

New legislation should be designed to give bus operators the opportunity to develop their service offering with the support of transport authority partners and without leaving some in our communities feeling isolated or left behind by the bus service.

## Impacts

### **Equality**

In creating a consistent approach to improve bus services in Scotland the public sector equality duty requires the Scottish Government to pay due regard to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the ‘protected characteristics’ of:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief; and
- sex and sexual orientation.

At this early stage in our planning for improving bus services in Scotland it is difficult to determine whether significant effects are likely to arise and the aim of the Scottish Government is to use this consultation process as a means to fully explore the likely equality effects, including the impact on children and young people.

Once completed the Scottish Government intends to determine, using the consultation process, any actions needed to meet its statutory obligations. Your comments received will be used to complete a full Equality Impact Assessment to determine if any further work in this area is needed.

**Question 14** - Are there any likely impacts the proposals contained within this consultation may have on particular groups of people, with reference to the ‘protected characteristics’ listed above?  
Please be as specific as possible

Elderly, Disabled, Women, Young People, Low Income Groups.

The decline of the wider bus industry and the contraction of the commercial and supported bus networks will disproportionately impact on the more vulnerable members of our communities who are often most reliant on good bus services.

**Question 15** - Do you think the proposals contained within this consultation may have any additional implications on the safety of children and young people?

If yes, what would these implications be? Please be as specific as possible

No

### Business and Regulation

In our work to improve bus services a Business and Regulatory Impact Assessment will analyse whether the policy is likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations.

**Question 16** - Do you think the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any sector?

Please be as specific as possible.

Clearly, if taken forward, there will be a significant impact on the bus industry and create new burdens and costs.

### Privacy

We need to ascertain whether our proposals for improving bus services in Scotland may have an impact on the privacy of individuals.

**Question 17** - Are there any likely impacts the proposals contained in this consultation may have upon the privacy of individuals?

Please be as specific as possible.

No

### Environmental

The Environmental Assessment (Scotland) Act 2005 ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse effects are sought, where possible, prior to implementation.

**Question 18** - Are there any likely impacts the proposals contained in this consultation may have upon the environment?

Please be as specific as possible.

A healthy bus network will support modal shift away from car and towards bus. This will have positive effects on climate change and local air quality.

