

## **Transport (Scotland) Bill**

### **1. Introduction**

- 1.1** The purpose of this report is to inform members of the recent Transport (Scotland) Bill<sup>1</sup> introduced by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, in the Scottish Parliament on 8 June 2018.
- 1.2** The Bill is now within the first stage of the parliamentary process, in which the Rural Economy & Connectivity Committee has launched a consultation survey, which seeks stakeholder views about the Bill.
- 1.3** SEStran will be responding to the consultation in two ways. One will be on behalf of the SEStran Partnership, the second will be through contribution through an agreed joint RTP response. Both responses are provided in the appendices of this report.

### **2. Transport (Scotland) Bill**

- 2.1** The Bill addresses a number of Scottish Government commitments from the 2017-18 Programme for Government<sup>2</sup>. The Bill aims to empower Local Authorities and enable them to implement future commitments as set out in the Programme for Government. The Bill is structured into the following six parts which will be considered within its consultation:
- 2.2**
  - Part 1 – Low emission zones: makes provision in relation to the creation and enforcement of low emission zones in Scotland.
  - Part 2 – Bus services: seeks to ensure that local transport authorities have viable and flexible options to improve bus services in their areas.
  - Part 3 – Ticketing arrangements and schemes (“smart ticketing”): makes provision enabling the Scottish Ministers to specify a national technological standard for the implementation and operation of smart ticketing arrangements and providing local transport authorities with additional powers to develop and deliver effective smart ticketing arrangements and schemes.
  - Part 4 – Pavement parking and double parking: introduces prohibitions on parking on pavements and double parking.

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<sup>1</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/108683.aspx>

<sup>2</sup> <https://www.gov.scot/Resource/0052/00524214.pdf>

- Part 5 – Road works: enhances the role of the Scottish Road Works Commissioner (SRWC) and the wider regulation of road works.
- Part 6 – Miscellaneous and general: includes providing Regional Transport Partnerships (Transport Partnerships) with more financial flexibility, part 6 also seeks to improve the governance of Scotland's canals.

### **3. Financial Implications**

- 3.1** The Bill gives legal clarity to Regional Transport Partnerships to create and carry forward financial reserves across the financial year-end, as with local authorities currently. This change aims to make it easier for the Regional Transport Partnerships to manage their year-end finances by enabling them to hold a balance of funds.
- 3.2** This change removes any perceived need for Regional Transport Partnerships to have a zero balance at the end of each financial year which will benefit the planning and delivery of projects.

### **4 Consultation and survey**

- 4.1** As the Bill is in the initial stages of the parliamentary process, future papers are likely to be brought forward for comment.
- 4.2** Appendix 1 of this report contains the provisional response to be provided on behalf of SEStran.
- 4.3** Appendix 2 is the agreed joint Regional Transport Partnership response. The consultation closes on the 28<sup>th</sup> of September.

### **5. Recommendations**

- 5.1** Members are invited to comment on the proposed SEStran response to the Transport (Scotland) Bill Consultation.
- 5.2** Members are requested to forward any additional comments to officers by the 26<sup>th</sup> of September.
- 5.3** Members are also invited to note the contents of the agreed Joint RTP Consultation Response

**Appendix 1** – Transport (Scotland) Bill, Proposed Consultation Response

**Appendix 2** – Transport (Scotland) Bill, Agreed Joint RTP Consultation Response

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**Strategy and Projects Officer**

13<sup>th</sup> September 2018

Policy Implications	The Bill could result in a number of policy changes
Financial Implications	Provisions within the Bill would allow RTPs to carry forward financial reserves across the financial year-end.
Equalities Implications	None
Climate Change Implications	None

## **Appendix 1 - SEStran Transport (Scotland) Bill Consultation Response**

### **SEStran**

Established by the Transport (Scotland) Act 2005, SEStran is the statutory Regional Transport Partnership covering the eight local authorities in the South East of Scotland including: Clackmannanshire, Scottish Borders, East Lothian, West Lothian, Midlothian, Fife, Falkirk, and City of Edinburgh Council. SEStran welcomes the opportunity to respond to the Transport (Scotland) Bill Consultation.

The Bill addresses a number of Scottish Government commitments from the 2017-18 Programme for Government<sup>1</sup>. The Bill aims to empower Local Authorities and enable them to implement future commitments as set out in the Programme for Government. The Bill is structured into the following six parts which will be considered as part of this consultation response:

### **Low Emission Zones (LEZs)**

Part 1 – Low emission zones: makes provision in relation to the creation and enforcement of low emission zones in Scotland. Key provisions as set out by the Bill, as stated by Transport Scotland include:

- Providing local authorities with powers to create, enforce, operate or revoke a low emission zone in their area and to design the shape, size and vehicle scope of their low emission zone
- The setting of specified emission standard by the Scottish Ministers by regulations
- The setting of grace-periods to allow those wishing to drive within the low emission zone an opportunity to upgrade their vehicle to a less polluting model (either by replacing it or having it modified) before penalty charges begin to be applied
- The ability for local authorities to promote permanent and/or time limited exemptions from the requirements of a low emission zone, where certain requirements are met to strict criteria; these exemptions will be set by the Scottish Ministers by regulations
- Enable Scottish Ministers to specify by regulations the amount of the penalty charge, with the ability to specify different levels of penalty charge depending on, for example, the class of vehicle, the emission standard of the non-compliant vehicle, or whether there are repeated contraventions

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<sup>1</sup> <https://www.gov.scot/Resource/0052/00524214.pdf>

- How contravention of the low emission zone standards would be handled. If contraventions occurred on the same day, in the same zone, using the same vehicle, and provided that the person who is liable to pay the penalty in respect of the vehicle is also the same in respect of the infractions, only one penalty per day would be payable;
- Detailed regulations and guidance will be produced for local authorities to deliver a consistent approach in how they enforce the new low emission zone requirements;
- Setting out the rules which will apply to penalty charge notices, such as the form they take, the time allowed for payment, internal review of a notice and/or appeal of the notice to an external adjudicator;
- Providing local authorities with powers to create, operate and revoke low emission zones with other councils; and
- Requiring local authorities to utilise the money they receive from the enforcement of the new restrictions for ring-fenced purposes, particularly to facilitate the achievement of the low emission zone scheme objectives.

SEStran supports the principle of LEZs, if they are delivered as part of a wider local or regional sustainable transport strategy. It must be clear what the LEZ is designed to achieve, as they will have a significant impact on the region. Many residents working in neighbouring councils work in the Capital. Therefore, any LEZs should be seen in that context, and should not be viewed in isolation. LEZs should be implemented alongside complementary measures that encourage the uptake of active travel and reduce the number of single occupancy vehicles. The Regional Transport Strategy (RTS) recognises that transport must play its part in the reduction of emissions and improvement of local air quality. Many SEStran RTS measures are aimed at reducing car single occupancy travel and encouraging sustainable travel behaviours. Indeed, there would be merit in LEZs being implemented/managed at a regional level.

As stated in the Bill, LEZs will enable Local Authorities to possess powers to restrict the access of vehicles which are not compliant with certain emission standards from entering specified districts. SEStran would agree that LEZ regulations ideally should be consistent across all LEZs in Scotland. However, it is understood that local decision making may dictate the need for flexibility to fund schemes' maintenance.

Care will need to be taken to ensure that the public are aware of the need for an LEZ, to ensure the penalty scheme is not seen as another "road user tax". This would require a consistent marketing campaign and promotional materials across Scotland, ahead of implementation. This should be considered along with the provisions made within the Bill regarding the provision of signs, ANPR cameras and the enforcement

of schemes. Sufficient investment must be made in further active travel initiatives and infrastructure in order to make an LEZ work. Funding and support must also be made available to ensure that transport operators within the region are able to operate within the city's LEZ.

The Scottish Government has committed to introduce Low Emission Zones in Glasgow, Edinburgh, Aberdeen and Dundee by the end of 2020. SEStran is currently represented on the Delivery Group for Edinburgh's LEZ. In this group SEStran aims to provide a regional perspective, alongside best practice examples. Including, last mile logistics research from the SURFLOUGH<sup>2</sup> EU project, and shared mobility examples from the SHARE-North<sup>3</sup> EU project. Overall, SEStran welcomes the proposals outlined within the Transport Bill. However, as previously mentioned, this should not be viewed in isolation, and financial support should be provided to Authorities so that these commitments are able to be met accordingly. The framework for such funding should be explicit on how it will support local authorities and public transport providers in the long term.

## **Bus Services**

Part 2 – Bus services: ensures that local transport authorities have viable and flexible options to improve bus services in their areas.

- Powers to create new Bus Service Improvement Partnerships (BSIP). These would replace current legislative provision to create Statutory Quality Partnerships (SQPs) and are intended to provide a stronger framework for partnership working than SQPs;
- Powers to introduce Franchising of a local bus network. This would replace current legislative provision to create Quality Contracts, and are designed to enable a simpler but still rigorous route to create a bus franchise in a defined area;
- New/extended powers for local transport authorities (LTA) to provide bus services to meet social needs. This would allow an LTA to create its own 'bus company' but only for those services deemed socially necessary, thereby avoiding any potential conflict with the commercial bus sector;
- Powers to require bus operators to make more information available to the public on services, including routes, timetables and fares. This would ensure current and potential passengers as are as fully informed as they can be in

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<sup>2</sup> <http://sestran.gov.uk/projects/surfloagh/>

<sup>3</sup> <http://sestran.gov.uk/projects/share-north/>

their decision-making about a trip (through better information on travel planning apps, for example, or Real Time Passenger Information); and,

- Powers to require operators varying or withdrawing services to provide more information to local transport authorities. This provision enables LTAs to be more informed about reasons for a service withdrawal, and at a more strategic level, encourage greater competition between bus operators.

### Bus Service Improvement Partnerships (BSIPs)

The Bill offers the opportunity to create BSIPs. Like SPT, other RTPs could provide a supportive role in the creation of BSIPs where cross-boundary routes to be considered. SEStran welcomes this opportunity, however, as the Bill currently stands, without considerable financial support and buy-in from the operators, the creation of further BSIPs could prove costly and largely unused. More support in this area must be considered, if falling bus patronage numbers are to be improved. SEStran, currently a model 1 partnership is not currently empowered to 'contribute' to a BSIP but could assist in facilitating.

### Franchising

With regards to the franchising powers considered for transport authorities, SEStran is in principle, supportive of this option. As in other Cities across this UK, this could result in improved services and an increase in patronage. However, this change would require a great amount of research and assessment of all routes, fares and their viability. This would be an extremely costly exercise, and cost benefits should be fully considered before being entered into.

### Information

SEStran welcomes the provisions in the Bill which would require bus operators to share information on routes and timetables. SEStran has continued to champion the implementation of bus real-time information throughout the SEStran Region and has seen its benefits across both urban and rural communities. However, SEStran would emphasise that data provided by operators should be openly available, and of a high standard, which can provide future improvements in passenger information services.

SEStran supports the powers that require operators varying or withdrawing services to provide detailed information to authorities, as this will allow authorities to understand the reasons for service withdrawal and provide them with strategic oversight on whether the authority is able to replace the service.

## **Ticketing Arrangements and Schemes (Smart Ticketing)**

Part 3 – Ticketing arrangements and schemes (“smart ticketing”): makes provision enabling the Scottish Ministers to specify a national technological standard for the implementation and operation of smart ticketing arrangements and providing local transport authorities with additional powers to develop and deliver effective smart ticketing arrangements and schemes. Key provisions as set out by the Bill, as stated by Transport Scotland include:

- Extending existing ticketing arrangements and schemes to include connecting rail and ferry services
- Giving Scottish Ministers the power to set a national technological standard for smart ticketing
- Setting up the National Smart Ticketing Advisory Board;
- Provide a guide for a consistent approach for smart ticketing arrangements and schemes, and clearer processes for them;
- The requirement for local transport authorities to produce annual reports on ticketing arrangements and schemes to evaluate and adapt for best practices; and
- Giving Scottish Ministers the power to direct a local transport authority to make or vary a ticketing scheme.

SEStran welcomes, in principle, the provisions of the Bill in relation to Smart Ticketing. Significant investment has already been made in smart infrastructure and further investment made in ensuring operators across the country can accept smart tickets, and it is right that these benefits should be maximised. SEStran has invested over £150,000 over the past 2 financial years, in kitting out smaller operators in the region with new ticket machines. ITSO is already widely considered as the UK standard, and is used across the Scottish National Concessionary Scheme, ScotRail and most bus operators. Another national standard would be costly to implement, so focus should be placed on the ‘smart’ solutions already in use within the market.

SEStran also believes that the establishment of a new Advisory Board and the requirement of Local Authorities to produce annual reports on ticketing would be unnecessary and an onerous task on an already stretched staff resource. In addition to this, the provisions made towards Ministers having powers to direct Local Authorities to implement ticketing schemes, seems unnecessarily excessive. Local Authority budgets and demand will determine the viability of a potential scheme, having Ministerial oversight would be unlikely be able to change these factors.

## **Pavement Parking**

Part 4 – Pavement parking and double parking: introduces prohibitions on parking on pavements and double parking. Key provisions as set out by the Bill, as stated by Transport Scotland include:

- Providing local authorities with powers to enforce the national ban on pavement parking;
- The ability for local authorities to promote exemptions from the national ban, but they will be required to meet strict criteria;
- The Bill provides exceptions to certain vehicles if they are involved in emergencies or delivering goods;
- Detailed standards and guidance will be produced for local authorities to deliver a consistent approach in how they enforce the new parking restrictions;
- Providing local authorities with powers to share services with other councils to enforce the new restrictions; and
- Requiring local authorities to keep accounts in relation to the money they receive from the enforcement of the new restrictions.

In principle, SEStran is supportive of the provisions regarding pavement parking within the Bill. Members within the SEStran Equalities and Access to Healthcare Forum have continued to express their concerns and experiences regarding irresponsible parking. It is welcomed that the Government is bringing such legislation forward to help vulnerable pedestrians such as the disabled, elderly and parents with small children. However, it is understandable that there is still concern over how Local Authorities will manage this new power, in times of budget constraints. Enforcement will be a new issue for each individual Authority to manage. Additional resources must be made available to support these new powers if they are to succeed. There is also the additional issue of areas (such as residential or near schools) where pavement parking has been established as a preferred alternative, to allow access of other vehicles (such as public transport or emergency services). Further, costly, assessment work of the road network would need to be conducted by the Authority to establish areas to be excluded from the legislation. The practicalities of enforcement will also be challenging, particularly for short duration offenders.

## **Road Works**

Part 5 – Road works: enhances the role of the Scottish Road Works Commissioner (SRWC) and the wider regulation of road works. Key provisions as set out by the Bill, as stated by Transport Scotland include:

- Clarification on the legal status of the SRWC
- Compliance notices with enforcement consequences for those who fail to take the required steps
- Non-compliance with a Compliance Notice will be an offence, which will mean that the SRWC will become a specialist reporting agency, and be able to submit reports to the Procurator Fiscal
- An inspection function for the Scottish Road Works Commissioner with associated enforcement powers and new offences including for obstruction
- A requirement for reinstatement quality plans (to establish that organisation have the necessary processes and competence to execute road works to the required standards)
- Requirements to notify actual starts and works closed within specified timescales to improve the accuracy of information relating to road works on the Scottish Road Works Register; and
- A requirement to place details of all utility apparatus onto the Scottish Road Works Register.

SEStran welcomes the provisions in relation to Road Works and those that will strengthen the powers of the Commissioner. These additional powers will help to promote compliance and set the requirement for reinstatement quality plans, ensuring that organisations meet the required standards when executing road works.

## **Miscellaneous and general, including RTPs and Scotland's Canals**

Part 6 – Miscellaneous and general, which includes providing RTPs with more financial flexibility and improves the governance of Scotland's canals. Key provisions as set out by the Bill, as stated by Transport Scotland include:

- Make it easier for RTPs to manage their year-end finances by enabling them to hold a balance of funds.

- Including the creation of specific reserve funds which are desirable for operational risk management
- Enable Scottish Ministers to vary the size of the Board of Scottish Canals in order to ensure that it has the skills needed to oversee the varied work of the organisation, thereby strengthen its capacity to support economic regeneration.

SEStran welcomes the provisions made in relation to RTP finances. It is welcomed that this will bring RTPs finance rules in line with their Local Authority partners. This will enable the Partnerships to hold a balance of funds and reduce risk in the implementation of projects. This change would allow RTPs a degree of flexibility to work on projects that will cover more than one financial year and consider planning for the longer term.

## **Conclusion**

In principle, SEStran welcomes the Bill and considers the provision within it a positive step in Transport Policy development. However, without suitable levels of financial support, a number of the provisions made within the Bill will be unlikely to come to fruition. The targets set out within the Programme for Government were indeed ambitious, and without the correct supporting conditions, this Bill may fall short in achieving this. These provisions cannot be viewed in isolation. Further considerations should also be made towards the needs of the travelling public, and whilst some of these provisions address a number of issues faced by our most vulnerable community members, more could be done to improve transport delivery to meet their needs. SEStran would emphasise the need for LEZ initiatives to be viewed and developed on a regional basis, due to the inevitable wide-ranging implications of significant restrictions in access to Scotland's cities as major concentrations of employment.

## **Appendix 2 - Transport (Scotland) Bill, Agreed Joint RTP Response**

### **Scottish Parliament**

### **Rural Economy and Connectivity Committee**

### **Transport (Scotland) Bill – Call for Evidence**

### **RESPONSE BY THE REGIONAL TRANSPORT PARTNERSHIPS OF SCOTLAND**

The seven Regional Transport Partnerships of Scotland (RTPs) – Hitrans, Nestrans, Sestran, Strathclyde Partnership for Transport (SPT), Swestrans, Tactran, and ZetTrans – were established by the Transport (Scotland) Act 2005. The RTPs have a range of responsibilities including preparation of the statutory Regional Transport Strategy for their respective areas, and development and delivery of transport projects across their region. Some RTPs also have operational responsibilities including the provision of socially necessary bus services, and infrastructure such as bus stations. Further information on RTPs is available at <https://www.transport.gov.scot/our-approach/strategy/regional-transport-partnerships/> where there is also a link to each RTPs website.

#### *General comments*

The RTPs welcome the opportunity to comment on the Transport (Scotland) Bill, and indeed have been liaising with Transport Scotland and other partners throughout development of the Bill to this stage.

In principle, the RTPs welcome the Bill, but believe in its current incarnation that it falls short of providing a framework for future growth in sustainable transport in Scotland. Further, without significant complementary support and significant capital and revenue funding, it will be difficult to realise the mechanisms available in the Bill. In addition, the RTPs believe that there must be greater recognition of their status within the Bill, bearing in mind that RTPs are democratically accountable, cross-boundary authorities working in the public interest.

The RTPs are guided that how the Bill when enacted operates in practice will be heavily reliant on regulation, secondary legislation and guidance. It is therefore essential that RTPs and partners continue to be fully involved throughout that process to ensure the Bill when enacted operates in the public interest.

Notwithstanding the above, however, the RTPs will continue to work with the Scottish Government and others to improve the Bill, and will explore every opportunity afforded by the new legislation to improve the transport networks of their respective areas.

#### *Low Emission Zones (LEZ)*

The RTPs support the LEZ provisions in the Bill but would highlight that supplementary regulations or guidance need to be clear on the commitments of partners, censure available should partners not deliver, and an appropriate level of funding is available to deliver an effective LEZ.

LEZs should not be viewed in isolation and must be implemented alongside complementary measures that encourage the uptake of public transport, active travel and reduce the number of single occupancy vehicle journeys.

Care will need to be taken to ensure that the public are aware of the need for an LEZ, to ensure the penalty scheme is not seen as another “road user tax”. This would require a consistent marketing campaign and promotional materials across Scotland, ahead of implementation. This should be considered along with the provisions made within the Bill regarding the provision of signs, ANPR cameras and the enforcement of schemes. Sufficient investment must be made in further public transport and active travel initiatives and infrastructure in order to make an LEZ work. Funding and support must also be made available to ensure that public transport operators within the region are able to operate within a city’s LEZ.

### *Bus Service Improvement Partnerships (BSIPs)*

The principle of BSIPs is welcome, and indeed provided transport authorities such as RTPs are given the power to specify the information required from operators in developing a BSIP, they may present a good opportunity for genuine progress. We have concerns regarding making the provisions in relation to standard-setting work in practice, and the potential for operators to dominate the BSIP development process. We further believe that there should be greater recognition of the publicly accountable, democratically elected nature of both RTPs and councils in the Bill in relation to BSIPs. The emphasis on BSIPs being binding, long-term commitments to improvement is very much welcomed, as is the fact that all signatories will be held to account and subject to censure if they fail to deliver on those commitments.

### *Franchising*

The RTPs, in principle, support the provisions within the Bill in relation to franchising, and believe it has the potential to deliver a step-change in the bus market in Scotland. However, we have concerns in relation to the proposal for an unelected, appointed panel having the final decision on the establishment of a franchise; we also believe that without significant funding, it will be unlikely that any public authority in Scotland would wish to explore a franchising solution. Further, and as with BSIPs, it is essential that transport authorities such as RTPs are given the power to specify the information required from operators in developing a franchise to ensure it is based on solid evidence and a level-playing field. There must also be censures for those who do not comply with any such request.

### *Municipally-owned bus companies*

The RTPs believe that if a public authority can prove it can deliver an activity more efficiently and effectively than the private sector, then there must be legislative provision available to facilitate this. However, the Bill’s provisions restrict the scope of municipally-owned bus companies to services that are ‘socially necessary’. This significantly reduces the viability of any such company, making it a wholly unattractive provision to any public body. Were there to be greater flexibility given in the type of services such a company could run, then this may be a more attractive proposition and the RTPs would welcome consideration of such a change in the Bill.

### *Information*

The RTPs are fully supportive of the principle of 'open data' and the provisions within the Bill. There must however, be opportunities to censure those who do not comply the Bills provisions. We would also highlight that we are aware that similar provisions in the Bus Services Act 2017 in England and Wales are proving challenging to implement and so lessons learned from there should be applied in Scotland.

We would also emphasise the importance of the information specified being made available at a sufficiently detailed level to be useful and meaningful for its given purpose. Further, appropriate provisions should be contained within the Bill to enable the transport authority to censure an operator in some form should they not comply with the information provisions of the Bill.

We would also support the powers that require operators varying or withdrawing services to provide detailed information to authorities, as this will allow authorities to understand the reasons for service withdrawal and provide them with strategic oversight on whether the authority is able to replace the service.

#### *Smart ticketing*

The RTPs have played a key role in the development of smartcard ticketing in Scotland, and welcome the provisions in relation to smart ticketing, but believe there could be greater clarity around the intentions of some parts of the smartcard proposals and trust that these will be addressed through guidance, regulations and secondary legislation.

#### *Responsible parking*

The RTPs welcome the principle of this and can see real benefits for some societal groups as a result of the Bill's provisions. However, we are concerned that the impacts of these provisions on local authority resources will be significant, and that there will be negative impacts on certain public service vehicles (emergency vehicles, buses, including demand responsive services) which can only currently gain access around a housing estate due to road space created by cars being parked on pavements.

Further, costly, assessment work of the road network would need to be conducted by the Authority to establish areas to be excluded from the legislation. The practicalities of enforcement will also be challenging, particularly for short duration offenders.

#### *Road works*

The RTPs are supportive of the provisions in relation to Road Works.

#### *Regional Transport Partnerships Finance - Reserves*

The RTPs very much welcomes and support the provisions in relation to RTP finance. This will allow RTPs to more effectively manage finance in the short term, while planning for longer term.