

Implementation of Part 3 (Bus Services) of the Transport (Scotland) Act 2019

1. INTRODUCTION

- 1.1 The Scottish Government has launched a consultation on the proposed implementation of Part 3 of the Transport (Scotland) Act 2019, the part which relates to bus services. Given the consultation closes on 6th October, and given the importance of the topic to SEStran strategically, Members are being asked to approve the proposed response.

2. The Consultation

- 2.1 The Consultation proposes how the legislation is to be implemented in detail, much of which is reserved to the stage of regulations and associated guidance.
- 2.2 The consultation document itself appears highly technical. However, at its core are the three ways in which bus services can be delivered in a new way under the Act going forward:
- Councils as local transport authorities running their own buses;
 - New ways of working via Bus Service Improvement Partnerships (BSIPs); and
 - Local bus services being delivered by means of a franchise arrangement.

The implementation of the first and third of these potential new ways to deliver bus services lies principally with local transport authorities. The councils themselves, as well as bus operators and professional bodies such as the Association of Transport Chief Officers (ATCO) will be preparing a response, and officers have liaised in particular with ATCO on their response.

- 2.3 However, where it is considered helpful, SEStran's response suggests how these potential ways forward might be made effective.
- 2.4 The remaining potential way forward for buses, Bus Service Improvement Partnerships, is an area where SEStran has had greater involvement, as it is a member of all five of the region's emerging BSIPs. Indeed, SEStran has where necessary provided secretarial services, assisted in procurement of consultants to pull together bids to the Bus Partnership Fund, and contributed financial assistance for consultancy support as well as regular contributions at meetings of the BSIPs.
- 2.5 With that in mind, the SEStran response picks up in particular on the seeming lack of definition around future governance arrangements of BSIPs and how, in practice, they can ensure buy in to the proposed bus service improvement plans and schemes by all stakeholders, most notably the operators

themselves. The legislation has an unusual means of ensuring that buy in, by effectively giving bus operators a right to vote such proposals down. Clearly there is a need for governance structures to ensure that the development of the relevant improvement plans and associated schemes is done on a consensual basis.

3. Recommendations

3.1 It is accordingly recommended that Members:

- (a) Approve the proposed response to the Consultation, subject to any agreed amendments; and
- (b) Delegate to the Partnership Director in consultation with the Chair to make any necessary textual amendments to reflect the views of Members before submitting same in time for the deadline of 6th October.

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Appendix: Consultation on Traffic Regulation Orders

Policy Implications	In line with emerging and existing RTS.
Financial Implications	None.
Equalities Implications	None for SEStran. Relevant Equalities Impact for the Scottish Government forms part of the consultation.
Climate Change Implications	None.

Background Papers:

[Consultation on Implementation of Part 3 \(Bus Services\) of the Transport \(Scotland\) Act 2019.](#)

Local Transport Authority Bus Services	
	Question 1: Is there anything which should be set out in guidance that LTAs must have regard to in exercising their new functions for running their own bus services? Please explain your answer.
	It is clear from the consultation that the guidance is not to provide a step by step guide. LTAs will decide to progress LTA-run services, but that decision is based on how this contributes to implementing the LTA's relevant general policies. Can Ministers stop local authorities if they disagree that it contributes to the 'general policies'? Some guidance is needed on this aspect of the process so authorities are clear about what might be required to make the case.
	Question 2: What further information and resources would be useful for an LTA considering providing local bus services? Please explain you answer.
	A summary of all relevant legislation would be useful to assist local authorities identify all relevant matters. Is there a role for a FAQ's and answers sections?

Bus Service Improvement Partnerships (BSIPs)	
	BSIP process
	Partnership plans
	Partnership schemes
	Question 3: Do you have any further comments in relation to the form and content of plans and schemes?
	There should be a requirement for schemes to be properly costed, so that operators can make an informed decision on the feasibility and sustainability of them.
	Preparation, variation and revocation of plans and schemes
	Question 4: Do you have any additional comment relating to the procedures for the preparation, making, postponement, variation and revocation of plans and schemes? Please include any comments on matters that may be helpful to consider for inclusion in secondary legislation.
	None
	Question 5: Do you consider any conditions are necessary for the variation or revocation of a scheme (where the scheme itself makes bespoke provision for this)?
	The conditions for variation within the scheme should ensure the same level of engagement and consultation occur as that required under PART 2 of SCHEDULE A1 and associated with a change promoted under section 3H.
	Question 5A: Please provide further information, including what conditions, if any, should be specified and why.
	Why have this power when there are other formal mechanisms for change within the legislation within SCHEDULE A1?
	Notices
	Question 6: Do you have any further comments on the content, form or publicising of the notices listed in Table 1? Please include these below
	None
	Facilities and measures

Question 7: Do you agree or disagree with the above definition of facilities?
Disagree
Question 7A: If you disagree, how should this be amended/ what should this contain?
The provision of Real Time Passenger Information hardware should be included. Systems supporting passenger information should be considered for inclusion.
Question 8: Do you agree or disagree with the above definition of measure
Disagree
Question 8A: If you disagree, how should this be amended/ what should this contain?
Priority signalling is infrastructure even if it is technology based and should be a facility.
Question 9: Should existing facilities form a part of a partnership plan/ scheme?
Yes
Question 9A: If yes, should there be a time restriction and why?
It is more important that the facility meets the scheme aims over the lifetime of the scheme to consider if the historical investment should be included. 5 Years seems reasonable.
Exempt services
Question 10: Do you consider any further services may or must be exempted from the service standards of the scheme (beyond services under section 22 of the 1985 Act as detailed above)?
Don't know. Section 22 of the 1985 Act is about community buses. How do we get the right standards if these are excluded from service standards of a scheme?
Question 10A: If yes, please comment on what services should be exempt. Please explain your answer.
No comment
Voting mechanism
Qualifying local services and qualifying time
Question 11: Do you agree or disagree with the above definition of "qualifying local service"?
Neither agree nor disagree
Question 11A: Please explain why and provide any relevant evidence.
N/A
Question 12: Do you consider any services should be excluded from voting (for example excursions or interurban services)?
This is a question for LTAs and operators to best answer.
Question 12A: Please explain your answer.
N/A
Question 13: Do you agree or disagree with the definition of "qualifying time" as set out above?
Agree
Question 13A: Please explain your answer.
N/A
Sufficient number of persons in relation to the voting mechanism

	Question 14: Do you agree or disagree with the voting mechanism as proposed above? (either of the options within the model can be adopted by the BSIP).
	Neither agree nor disagree
	Question 14A: Please explain your answer.
	<p>The definition as set out in the consultation seems relatively sensible. Operators and LTAs will have a view. However, this part of the consultation misses a major point, which is how the Government proposes that BSIPs should be governed overall.</p> <p>It is appreciated that the legislation as it stands does little to define what a BSIP should look like. However, there should at the very least be Guidance, and where possible using the regulations under Part 4 of Schedule A1, specific requirements, on the governance model to be adopted by BSIPs.</p> <p>Many operators operate across a number of LTA areas. In addition, small LTAs may be members of more than one BSIP if experience of the nascent BSIPs in the SEStran area (where 3 out of 5 Bus Alliances are multi-authority) is representative. That being the case, Guidance should set out clear, unambiguous guidelines as to what good practice in governance terms should be. Operators especially should be able to expect consistency between different BSIPs in terms of how representation is managed and decisions reached.</p> <p>At present, many BSIPs which have been formed to bid to the Bus Partnership Fund are loose alliances of LTAs, bus operators, and others such as RTPs and bus users' representatives. The legislation makes no provision for the latter two groups to have any say in what BSIPs decide; other than the consultation provisions. Decision making mechanisms in the BSIPs need to reflect that. From the RTPs' point of view, it is important to have a voice, and this is potentially useful in ensuring a consistency of approach.</p> <p>BSIPs should also be clearly intended to be distinct partnerships, and not adjuncts to existing governance arrangements. The latter approach may be convenient for the stakeholders in such arrangements but fails to recognise the distinct nature and purpose of BSIPs.</p> <p>One option would be to use a Members' Board approach, with elected representatives from the LTA(s) and representatives from each of the operators as well as other interested parties such as RTPs and bus user organisations able to attend and vote – subject to the veto provisions being constrained by the legislation, as set out above.</p> <p>A good example of how such a Board might be structured, and what guidance could therefore be given on a BSIP's governance structure, can be found in the Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005. This recognises for example that non-councillor members of an RTP Board do not have a vote on certain fiscal matters.</p>

	Other governance models exist. However, without any guidance on the matter, it is likely that BSIPs will be formed in different ways across the country, with each of them making a 'best guess' as to what best practice should be.
	Multi-operator travel card definition
	Question 15: Do you agree or disagree with the proposed definition of a "multi-operator travel card"?
	Neither agree nor disagree
	Question 15A: Please explain your answer
	This is a question LTAs and operators are best placed to answer.
	Reviewing and reporting
	Question 16: Do you agree or disagree with the proposed content of reviews and reports on the operation of a plan or scheme to be outlined in guidance?
	Agree
	Question 16A: Please explain your answer
	Guidance covers this best not regulations covering how to report.
	Scrutiny of bus service improvement partnerships
	Provision of information
	Question 17: What type of information should be excluded from the definition of relevant information and why?
	This question is best answered by ATCO and LTA's
	Question 17A: Are there any circumstances in which it should not be possible for the Local Transport Authority to require relevant information?
	This question is best answered by ATCO and LTA's
	Question 17B: Do you have any further comments on the provision of information within Bus Service Improvement Partnerships?
	Accessibility of services
	Question 18: What further guidance is required on how a partnership scheme and plan may consider the accessibility of bus services for disabled people and people who have limited mobility?
	This question is best answered by ATCO and LTA's
	Question 18A: Do you have any further comments in relation to accessibility of bus services in the context of Bus Service Improvement Partnerships?
	Guidance
	Question 19: What information, beyond the processes and considerations outlined in this chapter, should any guidance on Bus Service Improvement Partnerships contain?

Local Services Franchises	
	A franchising framework sets out
	Other key facts about Franchising Frameworks
	Franchising process
	Franchising assessments
	Breakdown of the Five Case model promoted by HM Treasury
	Guidance to LTAs on franchise assessments

Question 20: What should the guidance to LTAs on preparing a franchising assessment contain? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Provision of Information for Preparing and Assessing Proposed Franchising Frameworks
Question 21: What relevant information do you think LTAs should be able to require from bus operators for the purpose of preparing and assessing a proposed franchising framework? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Question 21 A: In preparing and assessing a proposed franchising framework, are there any circumstances in which you think the LTA should not be able to require relevant information (or types of relevant information)? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
The audit process
Guidance to auditors
Question 22: What should be included in the guidance for auditors? Please explain your answer.
An audit should be 'light touch' and not require intensive resource from those audited to respond. It should also be timeous and respect reporting deadlines.
Guidance to LTAs for making a new franchise assessment
Question 23: What should be included in guidance to LTAs in relation to the circumstances in which the LTA must prepare a new assessment of a proposed framework? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Independent panel appointed by the Traffic Commissioner
Question 24: Do you have any views on the constitution of the panel, including any criteria for potential panel members? If so, please explain.
Guidance should set out in particular the type of experience that panel members will be expected to have. At least some of them should have a regional perspective.
Question 24 A: Do you have any views in relation to the appointing, removing or replacing members to the panel and why? If so, please explain.
None
Functions of the panel
Question 25: Do you have any views about the process that the panel should follow in making their decision? If so, please explain.
None
Question 25 A: Are there any matters which you think should be prescribed in regulations that the panel must be required to consider (in relation to whether the LTA has given appropriate weight to such matters)? If so, please explain.
None
Information relating to services
Prescribing the time period for providing information

Question 26: How long should an LTA be given to require the provision of service information and why? Please explain your answer
This is a question LTAs and operators are best placed to answer.
Question 27: How long should an operator be given to provide that information and why? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Service Information Operators Must Provide
Question 28: What considerations might need to be taken into account when determining what revenue and patronage information an operator should be required to provide to an LTA under new section 6ZA(2) of the 1985 Act. Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Question 29: Do you have any views on what specific information should be prescribed? If so, please explain.
This is a question LTAs and operators are best placed to answer.
Question 30: Do you have any views on what specific information should not be prescribed? If so, please explain.
This is a question LTAs and operators are best placed to answer.
Extent of Permissible Disclosure
Question 31: What other persons do you think patronage information should be disclosed to and why?
This is a question LTAs and operators are best placed to answer. However, it would be helpful if patronage information could be disclosed to RTPs to assist in strategy development.
Further Provision and Consultation
Question 32: Under what circumstances might the application of new section 6ZA of the 1985 Act require to be excluded or modified? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Question 33: Should operators be required to keep records of information and if so, what information should they keep? Please explain your answer.
This is a question LTAs and operators are best placed to answer.
Question 34: Do you have views as to the form and content of the information operators may be required to provide under new section 6ZA of the 1985 Act including how it should be delivered? If so, please explain.
This is a question LTAs and operators are best placed to answer.

Impact Assessments

Question 35: Do you have any views on the contents of the impact assessments published in association with this consultation paper?
No
Question 36: Do you have any comments on the information contained in the partial BRIA including the options, costs and benefits discussed?
No