

Business and Regulatory Impact Assessment

Title of Proposal

Changes to Bus Registration in Scotland.

Purpose and intended effect

- **Background**

Under the Transport Act 1985 local bus services must be registered with, and are regulated by, the Traffic Commissioner. Section 2 defines the meaning of local services and section 6 sets out the registration requirement.

Registered services are subject to a regulatory regime administered by the Traffic Commissioner which aims to ensure the delivery of services to the proposed standard. The regime helps provide an important element of stability in the local bus network, facilitates the timely provision of information to bus users and others affected by planned changes in services and by giving advance notice of changes allows local transport authorities (LTAs) to consider whether to take action to avoid potential adverse consequences of proposed changes. The details of local bus services are generally required to be registered with the Commissioner before they come into operation, and the Commissioner has powers to act against operators if services are not being operated as registered.

- **Objective**

In August 2014 Transport Scotland published a consultation to discuss potential improvements to bus registration procedure in Scotland through amendments to The Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001 (SSI 2001/219), non-legislative means (guidance, code of conduct) or a combination of the two.

The changes proposed were designed to offer public transport authorities the opportunity to better manage the effects of planned bus service changes, new services and withdrawal of services on the transport network with the ultimate aim of providing greater certainty and information to bus users and potential new users. Interventions may include offering financial or other support to influence planned proposals before they are registered, while maintaining the overall competition-based approach to bus service provision. This additional support will benefit local transport authorities, bus operators and bus users and may have the added benefit of growing bus patronage.

- **Rationale for Government intervention**

While the bus registration regime in Scotland generally works well, the Scottish Government considers that there are a number of areas of the regime with room for improvement. The proposed changes would create time for more detailed discussion between bus operators and local transport authorities without lengthening the overall process, offering both parties the

opportunity to work collaboratively to their benefit and, ultimately, that of the bus user.

This contributes to the Scottish Government's National Performance Framework: by making Scotland wealthier and fairer we will generate wider opportunities for work, increase our competitiveness and make Scotland a more attractive place to live, work and invest.

Consultation

- **Within Government**

Bus and Local Transport policy team consulted with colleagues in Analytical Services Division and Scottish Government Legal Directorate, both of whom provided advice on draft proposals and offered valuable perspectives on our chosen approach.

- **Public Consultation**

A twelve week public consultation took place between 1 August to 24 October 2014. The consultation period was extended by two weeks to 07 November in order to allow late submissions.

- **Business**

Comments have been received from bus industry representative bodies, local transport authority representatives and regional transport partnerships. These have been taken into account in the development of the proposed changes. The parties who will be affected by the proposed changes (bus operators, local and regional transport authorities, Traffic Commissioner for Scotland) and other interested parties were informed directly by email when the consultation launched.

A total of 54 responses were received, which could be divided into five distinct groups depending on their institutional affiliation. The responses came from bus operators (7), local authorities (21), Regional Transport Partnerships (7), other professional organisations and trade body associations (12) and individuals (8).

Options

Option 1: Do nothing: maintain the current bus service registration regime in Scotland.

Option 2: Adopt some or all of the proposals outlined below

a) extend the pre-registration notice period from 14 days to 28 days.

At present, bus operators are obliged to inform the relevant authority or authorities 14 days before making an application to register (vary or cancel) a service route with the Traffic Commissioner for Scotland. Once the relevant authority (defined as any Passenger Transport Authority or local authority within whose area there will be a stopping place for the service) has acknowledged receipt of this notice, the operator can then proceed to registration, variation or cancellation of a service. This proposal is designed to provide additional time for

more detailed dialogue between the relevant authorities and bus operators in the run up to service changes. Both parties could use the greater period of notice for meaningful discussion on the implications and to plan accordingly to minimise any disruption or seek alternative options (possibly with third parties).

b) replace the duty to inform the relevant authority before making an application for registration with a duty to enter into dialogue with the relevant authority.

Currently, bus operators are obliged only to notify the relevant authority 14 days prior to making an application for registration. The authority must then acknowledge receipt of the notification. This proposal seeks to encourage a more collaborative approach between bus operator and local transport authority to determine how a proposed new route or change to an existing route might best be implemented to the benefit (or least disruption) of bus users.

c) relevant authorities should be encouraged through guidance to draw potential concerns about new registrations to the attention of the Traffic Commissioner for Scotland and/or Transport Scotland

In some circumstances it may be helpful for relevant authorities to draw to the attention of the Traffic Commissioner and/or Transport Scotland concerns relating to proposed service changes. This might provide the Commissioner with additional information which could help her in the exercise of her wider powers or identify issues with the operation of national bus service regulation or funding which could inform the further development of bus services policy.

d) reduce the period of registration from 56 days to 42 days (either (i) for all registrations or (ii) for applications registered using Electronic Bus Service Registration).

In conjunction with (a) above, this change would preserve the overall timetable from notification to service change at 70 days. However, this might not leave sufficient time to allow the conversion of finalised service details into timetables for public dissemination by local transport authorities. The alternative option of reducing the time period for electronic registrations only was also put forward for consideration.

e) operators will be required to detail within registered hourly frequency bands any services that are registered as frequent services.

In 2011 the Competition Commission's Local Bus Services Market Investigation recommended that the Scottish Government make changes to local bus services legislation to remove an incentive for bus operators to compete in ways that can lead to a rival's exit rather through ongoing competition on the merits of their respective offerings.

It is possible that much of what is proposed above could be achieved through Guidance and/or a Code of Conduct to facilitate engagement between operators and relevant authorities rather than changes to the legislation. Do you have any views on this?

The proposals in Questions (a), (d) and (e) would make limited changes to the legislation which would be backed up with guidance for parties to follow. The intention would be to give an impetus and create room for bus operators and the

relevant authorities to work better together rather than to prescribe a rigid sequence of steps to be undertaken.

Sectors and groups affected

The changes to the registration system are technical in nature and will directly affect bus operators, local transport authorities and the Traffic Commissioner. The changes could have an indirect impact on bus users from any overall improvement in services or information about them.

Benefits

Option 1 above retains the status quo. Consequently no change in benefits or costs.

Option 2: the changes proposed seek to improve the stability of the bus service network in Scotland. This, in turn, will help ensure that bus users have access to appropriate local services.

Extending the notice period to up to 28 days and correspondingly reducing the registration period to 42 days seeks to maintain the overall timetable from notice of change to actual change at 70 days. At the same time, these proposals, together with those requiring operators to enter into dialogue with local transport authorities and enabling the Traffic Commissioner to receive further information on registrations to inform her decisions, should allow local transport authorities greater notice of any changes and offer both operator and authority the chance to work in a more collaborative way in planning and maintaining the bus service network.

The Competition Commission recommended that operators should be required to detail within registered hourly frequency bands any services that are registered as frequent services. Existing rules for registering 'frequent services' requires only a statement of fact to be made and might allow operators to increase the frequency of buses in response to a competitor's entrance to the market without having to make an application to the Traffic Commissioner, leading to a rival's exit rather than competing through ongoing competition on the merits of their respective offerings. Competition should be to the benefit of the bus user through the provision of more choice and frequency.

Costs

The costs of these proposals should be limited and are likely to impact mainly on the operators and local authorities. The additional period set aside for dialogue may in some cases lead to additional administrative time and costs for both parties, although these are not expected to be significant beyond the limited administrative costs involved in fuller dialogue with the relevant authorities.

However, it is envisaged that the extended pre-registration notification period will cut the number of erroneous submissions as defects in the proposed registration can be addressed at this time, potentially saving costs associated with resubmission of registrations. In addition, the relevant authorities will have greater notice of planned registrations, allowing them to plan for changes and begin to prepare public information earlier in the process, i.e. prior to the submission of a registration.

In some instances, the enhanced dialogue which the proposals aim to promote may result in amendments to proposed service changes which could mean additional costs to operators or authorities. It would be for the operators or authorities concerned to decide whether to incur these costs taking account of wider commercial and other considerations.

Scottish Firms Impact Test

The proposals have been formulated from the outputs of the Bus Stakeholder Group, which includes representatives of both bus operators and local transport authorities. Further discussions with business interests were conducted in parallel with the public consultation and informed the drafting of the guidance to bus operators and local transport authorities.

Reducing the registration period for only those applications using Electronic Bus Service Registration (EBSR) would disproportionately affect small operators, who would have to meet the cost of installing EBSR compliant software. Accordingly, this option will not be progressed in order to allow time for the EBSR system to become more user friendly, cheaper and widely adopted.

Competition Assessment

The proposals outlined above are not expected to impact significantly more on some bus operators than others nor to restrict new entrants to the market. The proposed legislative changes are not likely to impose additional burdens on businesses.

Test run of business forms

The Office for the Traffic Commissioner will be making slight amendments to existing form PSV350 (Scotland) to take account of new time periods for pre-registration notification and registration period. This will have no material effect on businesses.

Legal Aid Impact Test

The proposals will not have any impact on individuals' right to access to justice and no impact on the legal aid fund. Scottish Government Access to Justice Team have confirmed that they concur with this view.

Enforcement, sanctions and monitoring

Some of the proposals would require secondary legislative change. These are the increase in the pre-registration notification period to up to 28 days and the corresponding reduction in the actual registration period from 56 to 42 days. Other changes agreed will be set out in Official Guidance.

We will monitor the impact of any changes made to determine if the desired result is achieved. The proposals are designed to facilitate behavioural changes on the part of operators and local transport authorities in order to improve the stability of the network and minimise disruptions. If the changes do not have the desired effect further legislative changes may be considered.

Implementation and delivery plan

The proposals went out for public consultation on 1 August 2014.

Consultation closed on 07 November 2014.

Analysis of responses continued thereafter and have informed the proposed changes to be made to legislation and Guidance.

In addition a number of workshops were held in the course of this year with stakeholders and interested groups to discuss the options put forward in the consultation and their possible effects.

The proposed Statutory changes and new Guidance will be laid before Parliament in December 2015 to come into force on 31 January 2016.

Post-implementation review

Transport Scotland will monitor the impact of any changes made to the registration process and consider any practical or unforeseen consequences as they arise. Any areas of concern are likely to become quickly apparent through representations made by bus operators and local transport authorities, the Traffic Commissioner for Scotland and the Bus Stakeholder Group.

Summary and recommendation

In summary, following public consultation and further discussion with bus operators, LTAs and other interested parties we recommend proceeding with some, but not all, of the options outlined above.

We intend to proceed with the following:-

- Extend the pre-registration notification period from 14 to up to 28 days.
- Replace the duty to inform the relevant authority of an application for registration with a duty to enter into dialogue.
- Allow the relevant authorities to draw potential concerns about new registrations to the attention of the Traffic Commissioner for Scotland.
- Reduce the registration period from 56 to 42 days.

All of these options found favour in the Consultation and resulting discussion with stakeholders. Although some authorities raised practical concerns about the reduction in the registration period, the overall consultation responses and further discussion with stakeholders lead us to believe that the increase in pre-registration notification period leaves sufficient time to plan for changes and prepare public information.

However, we do not intend to proceed with the following at this time:-

- Reduce the registration period for EBSR applications only.
- Operators to detail within registered hourly frequency bands any services that are registered as frequent services.

Feedback received during the consultation and since has confirmed that the vast majority of Scottish operators do not use EBSR at present and do not plan to use the system until problems with reliability and costs have been resolved. DfT and DVSA are investigating the barriers to take up of EBSR (Transport Scotland will contribute) and are expected to report in the next year. In light of this, we will then consider further how to extend the usage of EBSR in Scotland.

In addition, we will discuss the implications of frequency bands in more detail with operators and LTAs. A similar proposal in a DfT consultation was strongly opposed by operators and LTAs as creating inflexibility to address a rare problem that could better tackled by other means. This was accepted by DfT and the proposal was not taken forward.

- **Summary costs and benefits table**

Summary costs	Summary benefits
Potential for little or no benefit from the proposed changes if the parties fail to embrace the spirit of partnership and co-operative working that the proposals offer. However, this would have no real impact on costs.	The proposed new structure will encourage more meaningful discussion and information sharing between operators and LTAs. Should be of benefit to the bus infrastructure in Scotland.
No sanctions for inadequate consultation or engagement. However, will monitor the effectiveness of the changes and consider further options if improvements are not forthcoming.	The additional time allocated to pre-registration notice should facilitate greater accuracy of registrations when submitted as errors should be filtered out at this stage.
	Incentive for greater co-operation to reduce overall registration period by agreement.
	Overall effect should be to provide better service outcomes for users.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 23 November 2015

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