REGULATION OF BUS SERVICES BILL

SUMMARY OF CONSULTATION RESPONSES

Introduction

The consultation document accompanying the draft proposal for the Regulation of Bus Services Bill was issued on 4 November 2008 and the consultation ran until 27 February 2009. A number of late responses were received and all have been included in this analysis.

The purpose of the proposal as set in the consultation document is fourfold:

- to simplify the process of establishing a statutory Quality Partnership (QP) or Quality Contract (QC), so as to make it easier for transport authorities to respond to failing bus services;
- to extend free bus travel to people in receipt of the lower rate of Disability Living Allowance;
- to include demand-responsive bus services operated by Community Transport Operators in the National Free Bus Travel Scheme; and
- to bolster the employment rights of bus workers affected by the proposal through a Protocol involving all interested parties.

The consultation document was made available from a link on the Proposals for Members’ Bills web pages on the Scottish Parliament website. It was also made available on the Members’ homepage www.charliegordonmsp.com.

Some 1200 copies of the consultation document were issued to organisations, MSPs and MPs. Further copies were posted or e mailed in response to individual enquiries; others were distributed at public meetings, by the member, in Bellshill, Blairgowrie and Neilston; at the Annual General Meeting of Castlemilk Community Transport, Glasgow and at a round table event at the Centre For Independent Living in Glasgow, involving representatives from across Scotland, organised by Inclusion Scotland.

There were 95 responses to the consultation document. 8 respondents also sent petitions in support of key elements of the Bill proposal with a total of 705 signatures.

There were 8 responses from Members of the Scottish Parliament; 11 responses from local Councils or Regional Transport Partnerships (Transport Authorities); 31 responses from individuals and 45 responses from organisations.
In addition, Petition PE 1215 by Miss Janie Orr, was formally referred to the member by the Public Petitions Committee of the Scottish Parliament; it calls on the Scottish Parliament to urge the Scottish Government to improve the frequency of, access to and routes of, buses in rural areas in order to increase mobility and open up access for local communities to social, entertainment and education outlets; Petition PE 1215 gathered 78 signatures in support.

Respondents to the consultation document were invited to submit their own general comments and/or to answer the 21 questions contained in it.

**Analysis of Responses**

**General**

Only four respondents expressed opposition to the proposal. A number of the remaining responses did not offer a clear affirmation of the proposal, but invariably highlighted the inadequacy of bus provision in Scotland and the consequent need for change in the delivery of bus services. Some responses were accompanied by petitions in support of key elements of the proposal.

General concern was expressed in the submissions about the provision of bus services in Scotland, but in particular about the service provided to rural and semi-urban communities. In terms of how service delivery should be improved, there were a variety of different views expressed, from those who advocated re-regulation to those who favoured an amended version of the current framework. Many respondents also commented favourably on the other measures set out in the proposal.
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<th>EAST LOTHIAN COUNCIL</th>
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<tr>
<td>Bus de-regulation is regarded as having a negative effect and should be reconsidered.</td>
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<th>FIFE COUNCIL</th>
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<td>Rather than continue with the same model for bus provision which has prevailed for the last 23 years, all avenues for improvement should be explored, including re-regulation and franchising.</td>
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<th>STUC</th>
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<tr>
<td>The STUC reiterates its enthusiastic support for the proposed Regulation of Bus Services Bill and looks forward to contributing to any further consultation prior to and beyond the Bill’s introduction to Parliament.</td>
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<th>TURNER, CLLR BARRY</th>
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<td>Buses are not being used most effectively to meet local travel demands.</td>
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<td>Public transport is a key local cross cutting service and locally elected members should have a major say in its provision. Constituents seem to expect that.</td>
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**Questions**

The consultation document posed 21 question, these are considered below.

Questions 1, 2 and 9 are related questions re Statutory Quality Bus Partnerships (QPs) provided for by the Transport (Scotland) Act 2001:

**Question 1**

*Why have no transport authorities or bus operators yet implemented a statutory Quality Partnership under the 2001 Transport (Scotland) Act?*

**Question 3**

*Is it the case that no QPs under the 2001 Transport (Scotland) Act have been developed to date by transport authorities and bus operators because of significant development costs and little evidence that they would offer much more than is already available through voluntary partnerships?*

**Question 9**

*How effective are voluntary partnerships between local authorities and bus operators in Scotland?*

The majority view was that statutory Quality Partnerships have not been established because the process of doing so is overly complex, lengthy, bureaucratic and expensive. A number of respondents also noted that at the end of this lengthy
process it is more than possible that the agreed partnership fails to respond to public demands.

Other respondents referred back to the conclusions of the Local Government and Transport Committee's review of Transport (Scotland) Act 2001, in particular its conclusion that statutory quality partnerships had not been implemented due to the lack of incentives.

Some respondents attributed the lack of statutory quality partnerships solely to the bus operators. One respondent argued that no such partnerships had been established due to the ability of the bus operators to say no, while another argued that it was due to the unwillingness of bus operators to share commercially sensitive information.

Some respondents were critical of voluntary partnerships and argued that statutory partnerships could deliver improvements without incurring excessive costs and some argued that local authorities were being constrained by competition and procurement legislation.

Some respondents contended that informal partnerships are operating effectively, that there is no need for further regulation and that is why there are no statutory quality partnerships. It was suggested that in imposing statutory quality partnerships there would be a negative impact on the relationship between the bus operators and local authority.

CONFEDERATION OF PASSENGER TRANSPORT

Mr Gordon should not draw any inference from the absence of SQP schemes across Scotland other that that they have not been deemed necessary. Rather than discouraging them, CPT and our member operators have been heavily involved in the recent work to provide guidance to ensure that, should more Scottish local authorities wish to consider SQPs, a template and guidance exists to facilitate this.

SOUTH LANARKSHIRE COUNCIL

The main difficulty with the legislation is that even if a Quality Partnership could have been agreed, there has been no protection against another operator(s) moving onto the QP routes to take away patronage from the improved corridor(s).

Some respondents argued that voluntary partnerships can work. Other respondents argued that voluntary partnerships could work, but more need to be introduced and there needs to be more clarity on the role of the local authority and regional transport partnership. One respondent argued that they could work, but not across the whole of Scotland. Finally, one respondent argued that local authorities are being constrained in the operation of voluntary partnerships due to competition and procurement considerations.

FirstGroup

Q9: First believes that such voluntary partnerships have been highly successful in Scotland and have delivered substantial benefits.
The majority of respondents viewed Statutory Quality Partnerships, as provided for under the Transport (Scotland) Act 2001, as measures which could not or should not be used as a means of further regulation of bus services.

**Question 2**

How do you think bus services in your area could be improved? Do you think that more regulation via quality partnership and quality contract schemes would improve bus services?

There were a variety of different suggestions as to how bus services could be improved. For the most part, where a view was expressed on how the improvements could be achieved, there was support for greater regulation.

There were 34 responses to this question. Improvements that could be made largely concerned the level of service, the quality of the service, the accessibility of vehicles and the associated infrastructure and administration. In terms of accessibility, three respondents argued that the service would be improved by providing more accessible buses as well as more accessible bus stops. Of these three, one suggested that the best way to achieve this would be through better regulation.

There was considerable concern expressed about the quality of service provided at weekends and evenings and in rural areas. Five respondents noted that this reflected the conflict between social and commercial considerations and suggested one approach to improve the service provided would be to increase the availability of a demand responsive service.

Seven respondents argued that voluntary quality contracts and partnerships could effect change. One further respondent agreed that they could effect change, but only if the process of establishing a quality partnership was simplified and the need to prove market failure was no longer required to establish a quality contract.

However, some respondents questioned the effectiveness of quality partnerships and quality contracts. Four respondents argued that they could be effective in an urban environment, but that they would not be the answer to the problems effecting rural areas. One other respondent contended that although quality contracts could lead to an improvement in service provision it could be to the detriment of choice and availability and another argued that it would lead to substantial costs while not achieving any more than within an informal partnership.

There were four other approaches to improving services outlined in the responses, which were as follows—

- Significant increase in investment
- More regulation combined with greater consultation with passenger
- A passenger's charter to be imposed by the Parliament
- A investigation of bus company cartels

There was not an obviously clear trend in the responses, however, it was clear that improvements could be made in the provision of bus services. Moreover, there appeared to be a number of respondents who believed this could best be achieved through greater regulation although there was
less consensus on whether statutory quality contracts and quality partnerships were the best means by which to deliver greater regulation.

**Question 4**

What are your views on simplifying how quality partnership and quality contract schemes can be set up? How can the process be simplified?

There were 20 responses to this question, expressing a variety of different views.

Three respondents argued that QPs and QCs are not fit for the purpose they have been designed for and they should be replaced with more simple and relevant processes. One other respondent argued that there was no need to have both QCs and QPs and by abandoning one of them, the process would be simpler.

One respondent questioned whether the process to establish a QP or QC was complicated or whether there had simply been no need to establish one to date.

Three respondents contended that operators and local authorities have not entered into a QP or QC due to the cost, rather than the complexity of the process.

The remaining responses considered how the process of setting up a QC or QP could be simplified. Three respondents, including COSLA, contended that the process by which local authorities are required to provide the proof of market failure is inequitable and the process should be reviewed. Three respondents argued that greater passenger involvement would be beneficial. Two respondents argued that any bus operator having to operate in a particular area should be required to enter into a partnership with the relevant local authority or regional transport partnership. Finally, one respondent contended that there should not be a need for infrastructure to be in place prior to commencement of operation and there should be more flexibility on the eligibility of facilities for inclusion.

**ABERDEENSHIRE COUNCIL**

At a high level, the main way of easing QC Introduction, should such an intervention be considered worthwhile or feasible in terms of the financial and other issues associated with implementation, would be to amend/reduce the ‘burden of proof’ relating to market failure.

There was a clear recognition within the responses that there was scope for QPs and QCs to be simplified, however, there was little agreement on how this best could be achieved. A number of respondents did, however, suggest that the process by which market failure is proved and the necessity for it should be reviewed.

**Question 5**

What are the costs involved in implementing a quality partnership or quality contract?

There were 20 responses to this question.

Four respondents considered what those costs might be.
For transport authorities there would be costs include associated with meetings, site visits, developing options, consultation, liaison with stakeholders, assessing costs/benefits, designing infrastructure proposals, implementing bus infrastructure improvement works (such as bus lanes, bus priority, car restraint measures, new bus stops, shelters, bus boarders, build outs, real time information, CCTV), publicity, monitoring the effects of the measures, and working towards the next phase of the partnership.

Bus Operators would incur costs associated with meetings, site visits, developing options, consultation, liaison with stakeholders, assessing costs/benefits, providing modern accessible buses, installing real time information and CCTV, rescheduling of timetables, registering service alterations with the Traffic Commissioner, printing of new timetables, bus branding and staff training.

There were differing views expressed on how much this would cost from two respondents who suggested it would not be too high to another two who suggested costs could run in to the hundreds of thousands of pounds. Two respondents suggested that the costs would be too high to be viable and expressed concern at the lack of subsidy to the bus industry in Scotland compared to that seen in London.

One respondent suggested that in order to determine the cost and effectiveness of QPs or QCs each local authority should be required to establish a pilot project.

However, one respondent was more sceptical about the effectiveness of QPs and QCs regardless of cost, highlighting that they are only effecting improvement to one route.

Although respondents were unable to offer any accurate costings it was clear from the responses that most respondents believed that the costs involved in implementing a quality partnership or quality contract are significant.

**Question 6**

What are your views on abolishing the requirement for quality contract schemes to be approved by Scottish Ministers? What should the alternative be?

As has been previously noted, a number of responses to other questions reflected a desire for this approval process to abolished. There were 19 responses directly to this question. Of these 19, fourteen indicated support for the abolition of Ministerial approval. A few of these responses expressed support for some level of approval process to be undertaken by an independent body or transport authority.

Only one respondent argued that the approval process should be retained, while four contended that there were other more important obstacles to the creation of QCs and as such didn't express a view.

Overall it would appear that there is considerable support for abolishing the requirement for quality contract schemes to be approved by Scottish Ministers and that there was some support for transport authorities to fulfil the role in the process.
Q6: Yes, I agree that Scottish Ministers should not approve Quality Contracts that this should be between the local bus companies and the local authority.

Question 7

The Scottish Government’s “Bus policy Overview” of 2006 said “…there are areas - notably in the West of Scotland - where the quality of service in the evenings and on Sundays is restricted. In addition in parts of rural Scotland, bus services are too thin to provide the services which people seek.” Has the situation described above improved, worsened or remained the same?

There were 29 responses to this question. 22 of the responses to the question suggested that the position had not improved across Scotland. Seventeen of these respondents noted that the situation had improved in some areas, but not in rural areas or at evenings or weekends. Five responses suggested that there had been no improvement; however, there had equally been no deterioration in service provision.

Two responses suggested that the Bus Regulation Development Grant had brought about improvements in the quality of service in several areas, but recognised that this was not universal and that there was scope for deterioration of services in the current financial climate.

It appeared from the responses therefore that there was general agreement that services had not improved and if anything had worsened, particularly in rural areas and at evenings and weekends.

Question 8

Given the examples of voluntary partnership between transport authorities and bus operators, is there a need for further bus regulation?

27 respondents answered this question. Seven respondents expressed unequivocal support for further regulation, arguing that the current legislative tools are not sufficient to remedy the serious problems in the delivery of bus services. Four respondents considered that voluntary partnerships are not working and considered that further regulation may be the answer. One respondent contended that while there was no need for further regulation in urban areas there would be benefit in greater regulation within rural areas. Two responses conceded that QPs and QCs are not proving effective and argued for change, but not specifically for further regulation.

Four respondents, however, argued that voluntary partnerships are working or could work. A further two argued that until statutory partnerships had been tested, there was no merit in introducing new legislation and one respondent argued that it was because of regulations that voluntary partnerships are constrained.

Finally, two respondents were unwilling to commit their support to further regulation until they saw what was proposed.
Overall, however, it appeared that more respondents favoured greater regulation than did not.

**Question 10**

**How could improved regulation of bus services support the work of the Traffic Commissioner in Scotland?**

24 of the responses answered this question. A variety of different views were expressed as to how regulation of the bus service could support the work of the Traffic Commissioner in Scotland. In general, there was view that the role of the Commissioner should be strengthened. Five responses argued in general terms that more regulation would be of assistance to the Traffic Commissioner. Three further respondents argued that a more formalised structure would assist the work of the commissioner, particularly in relation to the obtaining of information.

Two responses, however, considered that improved regulation would change or assist the work of the Traffic Commissioner.

Four responses contended that even under the current regime improved levels of scrutiny by the traffic commissioner could bring about change through the provision of more resources.

The remaining 6 responses, argued that there would only be any benefit if improved regulation was combined with more powers for the traffic commissioner and more staff to monitor compliance with the new regulatory framework.

*It would appear therefore that the predominant view was that improved regulation could support the work of the Traffic Commissioner, but in order to do so there would also need to be an increase in the powers and resources of the Traffic Commissioner. It was also considered that given more resources the traffic commissioner could effect change under the current framework. The Transport (Scotland) Act 2001 makes provision for transport authorities, under a Quality Contract, to use their resources to carry out roles otherwise carried out by the Traffic Commissioner, such as registration of bus services and monitoring of bus timetables.*

**Question 11**

**Should provision of fully accessible buses in Scotland be 100% before the 2017 deadline set by the Disability Discrimination Act 2006?**

There was some disagreement amongst respondents as to whether or not advancing the deadline for compliance with the Disability Discrimination Act 2006 would be possible or desirable.

There were 36 responses to this question. Ten respondents contended that the deadline should be brought forward. It was noted in one of these responses that while in areas like Edinburgh and Aberdeen almost 100% of buses are accessible, in parts of Fife and the West of Scotland the figure is closer to 25%. A further two respondents contended that as vehicles purchased after 2006 had to be accessible it should not be too difficult to bring forward the date for total compliance and one respondent suggested that the date should be brought forward to 2014.
24 responses, however, questioned the merits and practicalities of bringing the date forward. Six respondents argued that the date should not be moved and to do so would be impractical. Three respondents questioned the practicality of this on the grounds that a long with making buses accessible there should also be drive to make the surrounding environment and infrastructure accessible. Another two responses questioned how small bus companies would be able to deliver this and one argued that it would precipitate increased fares. Another respondent questioned whether achieving the 2017 date would be possible given the consequences of desegregation and one respondent questioned whether this would less to a contraction in bus services.

The majority of responses agreed that while it would be good to have fully accessible bus fleets prior to 2017, it is impractical and could have unwelcome consequences for bus users and operators.

**Question 12**

What are your views on the potential of regulation of buses to lead to greater co-ordination of buses with other modes of transport in terms of through journeys and through ticketing?

Although recognising some practical difficulties, all bar four of the 32 respondents to this question believed that it was desirable to achieve greater coordination and that this could be achieved through greater regulation.

Some of the responses expressed that the benefits of co-ordination could be negated by additional bureaucracy and that it could be very costly.

A number of other respondents raised concern about whether or not under the terms of the Competition Act such coordination would be possible. It should be noted, however, that one response highlighted that the Confederation of Passenger Transport and Scottish Government are working with the Office of Fair Trading in relation to this matter.

It was clear from the responses, however, that there was a belief that regulation could precipitate greater coordination of buses with other modes of transport and the member awaits the outcome of the Scottish Government’s work on this issue.

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<td>Q12: One problem is that such co-ordination between the different operators can be illegal under the Competition Act 1998, if it is by agreement. The recent legislative change in England and Wales has permitted operators to agree co-ordinated timings and joint services where the local authority can provide a letter of support indicating that it is in the public interest. Such a legislative change would bring commensurate benefits to Scotland.</td>
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**Question 13**

Is there a case for disaggregating the Bus Service Operators Grant to Councils?
There appeared to be limited support for disaggregating bus service operator grants to councils. Only four of the 30 responses to this question expressed unqualified support, one expressed support, but only if excessive administration costs could be avoided and five expressed support, but only if the fund was to be ring-fenced. Four respondents did favour desegregation, but to Regional Transport Partnerships or Transport Scotland rather than councils. Eleven respondents expressed outright opposition to the proposal. Two further response contended that the Bus Service Operator Grant might not be the best way to deliver cost savings.

COSLA

Q13: If the BSOG were to continue in its current form or be transferred elsewhere outwith councils, we would welcome the inclusion of environmental considerations in the terms of the grant.

There appeared therefore to be some concern about disaggregating the bus service operators grant to councils without imposing some conditions upon it.

**Question 14**

What are your views on Action Point 9 in the Scottish Government’s Bus Action Plan: “In order to support franchising where there is market failure, review the legislation on QCs to simplify the process to be followed by transport authorities”?

And

**Question 15**

What are your views on Action Point 10 in the Scottish Government’s Bus Action Plan: “Reviews the legislation to simplify the process and increase the benefits to the passenger”?

Responses to these two questions largely concerned themselves with the benefits of a review of the current legislation rather than the action points. As such, responses to these two questions have been considered together.

In total there were 43 responses to the two questions. Only three respondents considered that the existing legislation was adequate. 25 respondents believed that a review was desirable and in some cases suggested that the current legislation could be amended in such a way as to make it effective. One respondent was unclear on the usefulness of such a review and two respondents considered that QCs and QPs were not the answer. Of these respondents, one argued for nationalising the bus service.

It appeared therefore that a majority of respondents to this question considered that a review was necessary and could be effective.

**Question 16**

Is there ambiguity and consequent uncertainty on the issue of bus regulation in Scotland?
There were 27 responses to this question. 13 respondents to this question answered yes. A lack of consistency and differentiation between the role of the transport partnership and local authority in delivering bus services, a lack of public consultation, uncertainty over procurement and competition legislation and the continued primacy of the 1985 Act in spite of the implementation of subsequent legislation were all highlighted as reasons for the ambiguity.

Five respondents considered that there is no ambiguity within the regulation of buses in Scotland and one respondent felt unable to comment until they were aware of what the Member was proposing.

**Overall, however, there was a considerable majority of respondents who considered that there is considerable ambiguity and uncertainty within the current framework.**

**Question 17**

Is this public consultation an opportunity to resolve ambiguity and uncertainty in bus policy in Scotland by providing evidence from interested parties?

15 respondents believed that this public consultation was an opportunity to resolve ambiguity. A further eight respondents were hopeful that it could provide this opportunity and only one respondent believed that it did not offer this opportunity.

It was clear that respondents believed that this consultation could lead to improvements in bus policy in Scotland.

**Question 18**

What are your views on ensuring that those in receipt of the lower level of Disability Living Allowance are included in the scheme?

Considerable support was expressed for including those in receipt of the lower level of Disability Living Allowance in the concessionary fares scheme. 25 respondents, 75% of those who responded to the question, expressed unequivocal support for the extension of the scheme in this manner. One of these 25 respondents also argued that those accompanying the person on the lower level of Disability Living Allowance should also be included in the scheme.

**HIGHLAND USERS GROUP**

Q18: We think that anyone on low rated d.l.a whether this be the care component or mobility component should be able to qualify for the concessionary bus passes.

This is because people who previously qualified under the council scheme are now at risk of losing their bus passes under new regulations.

Three respondents supported the extension, but only if adequately funded.

Four respondents argued that the concessionary fares scheme should be reviewed more generally, with one suggesting that the minimum age should be increased to 65 and that another that it should be means tested.
Five respondent contended that in general, recipients of the lower level of DLA will have health issues, but will not have mobility issues. As such they argued that recipients of the lower level of DLA could be reassessed, but all recipients should not be made eligible.

**There was little doubt, however, there exists considerable support for extending the concessionary fares scheme in this manner.**

**Question 19**

What are your views on extending existing legislation to include community transport and demand responsive transport teams in the concessionary travel scheme?

There were 34 responses to this question. The majority of respondents supported the extension of the concessionary travel scheme in this regard too. 25 respondents expressed support for this measure, arguing that there is little merit in concessionary fares if the person is unable to access public transport. In supporting this measure, some respondents argued that it would only be effective and desirable if standards were applied to the vehicles used in community transport and demand responsive transport. To this end, it was argued that the voluntary sector providing this transport would need more funding and resources.

**BUCHAN DIAL A COMMUNITY BUS**

Q19: We feel that it is of paramount importance. CT and DRT provides accessible transport to some of the most vulnerable people in Scotland.

One further respondent agreed to support the measure, but only if community transport and demand responsive transport is operated by the local authority. One respondent did not support the measure, but welcomed discussion.

Four respondents felt that the burden on the voluntary sector would be too much and services would be withdrawn as consequence. Three other responses expressed opposition to the proposal.

**There was clear support, however, for this measure with 74% of those who responded to the question indicating their support. At the same time, it should be recognised that many of those provided their support on the grounds that more funding and resources would be dedicated to community transport and demand responsive transport.**

**Question 20**

What equal opportunities issues arise from this and all other aspects of my proposal?

Amongst the 27 responses to this question, there were a variety of different views expressed with regard to equal opportunities issues. A number of respondents concerned themselves with the extending of community transport and demand responsive transport. More still highlighted how the lives of vulnerable and disabled people are restricted and could be improved.
In addition to these more general responses, there were three specific proposals with regard to equal opportunities issues. Firstly, it was suggested that local authorities should have a duty placed on them to audit needs of disabled and vulnerable people within their authority and arrange appropriate services to remove barriers. Secondly, it was proposed that all bus staff should receive training related to providing an accessible service and that bus conductors should be re-introduced. Finally, it was argued that before the Member legislates a Disability Equality Impact Assessment should be conducted.

**Question 21**

What are your views on bolstering the Employment Rights of Bus Workers affected by competitive tendering by a protocol covering all interested parties?

69% of respondents to this question expressed support for this measure. Only 3 respondents to the question were opposed to the idea. Two further respondents contended that the proposal should be considered further.

**Conclusion**

The responses to the consultation along with the supporting petition signatures show that there is a significant support for the key elements of the Bill proposal consulted upon, as well as raising other issues which merit policy consideration in a Draft Bill which the Member intends to take forward.