

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

TRANSPORT (SCOTLAND) BILL

SUBMISSION FROM URBAN TRANSPORT GROUP

1. Introduction

About the Urban Transport Group

The Urban Transport Group brings together and promotes the interests of Britain's largest urban areas on transport. Our full members are Transport for West Midlands, Merseytravel (Merseyside), Nexus (Tyne and Wear), South Yorkshire PTE (Sheffield City Region), Transport for Greater Manchester, Transport for London and West Yorkshire Combined Authority. We also have associate members which are the West of England Combined Authority, Nottingham City Council, Strathclyde Partnership for Transport and Tees Valley Combined Authority. Between them our members serve over 24 million people.

2. Response

- 2.1. The Urban Transport Group welcomes the intention of the proposed Transport (Scotland) Bill. In this response we are focussing on the provisions for bus reform given our experience of successive reforms to Westminster legislation on buses (in 2000, 2008 and 2017). Our members also have considerable experience in seeking to utilise the legislation. One of our members, Nexus (Tyne and Wear PTE), was the only authority to attempt to introduce franchising using the 2008 Westminster legislation. We note the parallels between Westminster legislation and Scottish legislation, though on different timescales with the current Scottish legislation paralleling the 2000 Westminster Act and the Transport (Scotland) Bill sharing key features of the 2008 and 2017 legislation.
- 2.2. We also note the parallel experience of Scotland and England in that bus services, and bus use, has been in decline. Bus patronage in the South West and Strathclyde area of Scotland has declined by 61 million trips, or 27%, over the 10 year period to 2016/17¹. Bus patronage in Metropolitan areas in England has declined by 10.8%² over the same ten year period. The most notable exception to these trends in Great Britain has been London, which has seen considerable overall growth up until recently, with a 92% increase in bus patronage between 1986/87 and 2016/17³. London is the only part of GB where bus services have never been deregulated, which enables London to plan, oversee and regulate its bus services in a similar manner to most urban transport authorities in Western Europe and most developed cities around the world.

¹ Scottish Transport Statistics, No 36, 2017 edition

² <https://www.gov.uk/government/statistics/annual-bus-statistics-year-ending-march-2017>

³ Ibid

- 2.3. The Transport (Scotland) Bill provides two routes for locally accountable transport authorities (LTAs) in Scotland to pursue in an effort to improve bus services: Bus Service Improvement Partnerships (BSIPs) and franchising. It also provides the ability for LTAs to set up municipal bus companies (which is not possible in England).
- 2.4. BSIPs have the potential to enable bus operators and LTAs to push the limits of what a voluntary partnership can achieve within a wider deregulated framework. Franchising allows LTAs to determine the nature of local bus services including full integration of fares and services and contractually enforceable obligations on service quality. In essence this franchising system is the same system that is used by the Scottish Government to provide passenger rail services in Scotland.
- 2.5. We believe the overall process set out in the legislation for franchising is sound in so far as:
 - The decision whether or not to initiate a proposal for a franchise is devolved to the transport authority and;
 - The authority has to prepare a business case which meets certain tests and which has to be consulted upon.
- 2.6. Like the 2017 Westminster legislation, this is in line with the principle that decisions about local services like buses are best determined locally. It also provides a process which limits the potential for legal challenge to areas which relate to process and the reasonableness of decisions taken. It also ensures that there is proper consultation before any final decisions are taken.
- 2.7. The franchising option is also not restricted to certain forms of transport authorities, unlike in England, where the 2017 act requires non-Mayoral Combined Authorities to seek authorisation from the Secretary of State in order to begin the process.
- 2.8. In addition, the legislation provides a broad definition of what could be included in a franchising scheme, subject to a business case being made, giving LTAs more freedom to act in their areas' best interests when compared with the 2017 Westminster legislation.
- 2.9. However these improvements on the Westminster legislation may prove to be immaterial in practice as we have major reservations about whether the legislation will ever be used, given that the Bill has borrowed and amplified a key feature from the failed 2008 Westminster legislation by giving a panel the ability to veto any scheme.
- 2.10. Nexus, the Tyne and Wear Passenger Transport Executive, is the only organisation to have experience of a similar panel. No other transport authority attempted to use the 2008 Westminster legislation on Quality Contract Scheme (franchising) due to the risks and uncertainties surrounding a panel decision in what is, by its nature, a challenging and unprecedented move from an unplanned and deregulated market to a planned and franchised market.

- 2.11. The Nexus experience of the 'Quality Contract Scheme (QCS) Board' in 2015 was a process in which one party, the transport authority, had to justify changing everything in the market place, whilst the other, commercial bus operators, only have to justify why changing just one aspect of the market place is too risky. Considerable evidence, including exceptionally complex economic analysis, was submitted to the QCS board, proving extremely difficult for an under-resourced panel to adequately consider the complexity of the proposals.
- 2.12. The QCS board voiced concerns regarding forecasts around funding, value for money of a QCS versus a Voluntary Partnership Agreement and also proportionality. On proportionality, whilst the QCS board accepted that the scheme put forward by Nexus would generate significant economic benefits to the public, they advised that the disbenefits to incumbent monopoly operators would be significant and disproportionate to the benefits accruing to residents in Tyne and Wear as a result of the scheme. In essence, they put the potential losses of a monopoly business ahead of the interests of the residents of Tyne and Wear in their judgement.
- 2.13. Furthermore the Scotland Bill proposes powers that go beyond the English 'QCS board'. The 'QCS board' was only required to make a recommendation, with the transport authority making the final decision on whether to proceed. However, the proposed panel in the draft legislation is given the duty to make the approval for a franchising scheme. This will put great weight on the decision of the panel and may leave the panel at risk of judicial review from incumbent monopoly bus operators.
- 2.14. The proposal for a panel based decision fundamentally goes against the principles of devolution. In effect the future of local bus services, and the people who rely on them, has been handed over to an unelected quango who in turn will be subject to battalions of exceptionally well-resourced lawyers seeking to protect the interests of incumbent monopoly operators.

3. **Conclusions**

- 3.1. Urban Transport Group welcomes the inclusion of franchising in the proposed legislation and supports the way in which it gives LTAs the decision making powers to initiate a proposal and the way in which LTAs are required to assemble their case. We also welcome the ability of LTAs to set up municipally run bus operations.
- 3.2. However, the legislation falls short where it proposes the inclusion of an unaccountable panel which will sit in judgement on any franchise scheme. The complete failure of the 2008 Westminster legislation in relation to franchising led to the recognition that the panel process was fundamentally flawed and it was subsequently completely removed in the 2017 Westminster Act nearly ten years later.
- 3.3. During that time, bus services have continued to decline, passenger numbers have continued to fall and fares have continued to rise above the rate of inflation. In our

view, if Scotland wants to avoid a similarly wasted decade then the Bill should remove the panel entirely and ensure that the decision to proceed with a franchise is that of the locally accountable transport authority on the basis of the fair, transparent and proportionate process that the rest of the legislation broadly sets out.

- 3.4. It's important to stress too that without a workable route to franchising (which the Bill does not provide) the negotiating position with operators in relation to partnerships is also weak. Operators ultimately know that LTAs have no alternative but to accept what incumbent operators wish to provide. It will also in effect lock new commercial entrants out of the market as bus operators who want to come to Scotland and provide bus services have no way to access the market, other than by engaging in a 'bus war' with incumbent operators on the streets. New entrants are unlikely to want to do this and any such on-street 'bus wars' would be of no long term benefit to bus users anyway.
- 3.5. Finally it is instructive to note that the 2008 Westminster Bill also initially gave the panel decision making powers. The fall back 'compromise' position that was eventually adopted was to make the panel advisory. The lesson from England is that ultimately this was not a compromise worth having and we believe that the same would prove to be true if this is the compromise that is offered further in the parliamentary process in Scotland.