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Welsh Government - Consultation Document - Improving public transport

Background

The White Paper seeks views on a range of issues relating to both bus services and the law on taxi and private hire licensing. Currently PSV legislation is a reserved matter; this contrasts with the law relating to taxi and private hire vehicles which is now devolved. The Law Commission for England & Wales produced a helpful paper on taxi and private hire law reform, I contributed as the lead traffic commissioner on small PSVs, for this purpose this includes taxis and private hire vehicles as well as novelty vehicles.

I seek to provide a response which is of practical value and include comments on a range of related passenger transport issues, including bus registrations and community transport. If proposals in the White Paper are implemented without also addressing these related issues, opportunities for a coherent, efficient and effective regulation of public passenger transport in Wales may be lost.

The Commission on Devolution in Wales (The Silk Report) recommended devolution of PSV operator licensing, this did not come about and instead only PSV registrations are devolved. This is unfortunate as current legislation relating to PSVs is showing its age and adds to the difficulties in effective enforcement. Successive Westminster Governments, across the political spectrum have legislated but the piecemeal implementation relating to PSVs renders effective change more difficult. Amendments to amending legislation have resulted in various unintended outcomes. Whilst there is no existing provision for the Welsh Assembly to legislate on PSVs, careful use of funding powers might be used to address many of the obstacles.

Public funding of services

The PSV industry will refute suggestions that there is a subsidy for PSV operators and that Welsh Government and local authority funding merely reflect an appropriate reimbursement of costs e.g. concessionary fares for the over 60s. However this cannot detract from the point that whilst operators rely on fare paying passengers, income is also derived from public funds; furthermore without this public funding it is very possible that a number of operators would be financially unviable. According to Welsh Government figures for 2014/15 from a consultation exercise called a "Bus Service Policy Discussion" published in March 2017, 34% of journeys for English operators are concessionary bus journeys as opposed to fare paying passengers. The figure for Scotland was given as 36%. In the case of Wales the published figure was 46% with a note that it would rise relatively quickly to 50% given the demographic profile of Wales. This reflects existing very generous arrangements for the over 60s. In fairness Wales was one of the first Governments to recognise the benefits in ensuring mobility for senior citizens and at that time it set a age for eligibility for a free bus pass at or near what many recognised was a normal pension age. Successive changes to pension ages have been reflected in raising the age for eligibility of concessionary fare entitlements in England, this is yet to happen in Wales.

Within England, the Bus Services Operators Grant (BSOG) is at a standard rate across the country without provision to provide for separate quality of service. Devolution within Wales with its equivalent, Bus Services Support Grant (BSSG), has provision for quality elements. Whilst BSSG should theoretically be an incentive to provide a better quality

service, it is only a small ratio of the funds expended on concessionary fares. If there was a reversal in the ratio of public monies between concessionary fares and BSSG, this would provide for exponentially greater public (local authority and Joint Transport Authority) control.

The means by which public funds are provided to operators is a matter of concern; whilst local authorities and Welsh central government have responsibilities, there is an apparent lack of ownership over the distribution of monies. Recent convictions for large scale frauds have revealed a need for far better controls on public monies. A sad feature is that the substantial six figure sums defrauded by just one group could have provided substantial support for local rural areas where financial constraints made it difficult to justify public subsidy.

Currently there are 3 bus compliance officers across Wales who verify timetable compliance. Whilst both I and the PSV industry have a high regard for them, they are too few in number. If the numbers were increased they could carry out checks to verify a range of factors relating not only timetable compliance, but also concessionary fare and BSSG reimbursement. This would provide value for money with better quality checks to ensure that the public purse was protected.

Registration of bus services

I refer to successive annual reports where I have made it clear that the current arrangements for registrations of bus services provide for little more than a post box exercise, with registrations deposited at a centralised office in Leeds. As set out in my last annual report to the Welsh Government, 3.5 full time equivalent staff undertake this task for the whole of England and Wales outside of London. In that report I described how there was very little scrutiny of registrations with inadequate IT and a pitifully low level of staff which rendered it impracticable to have any meaningful checking of registrations, except where staff were put on notice by a local authority. For the avoidance of doubt I do not seek to be critical of the dedicated and excellent staff who work for TCs in the centralised office in Leeds, unfortunately neither staffing numbers nor grading reflect operational needs.

Checking is undertaken by a team leader who is hindered by the fact that aside from checking the work of the staff dealing with registrations, she is also responsible for all section 19 and section 22 permits issued by traffic commissioners in GB.

Consistently I have recommended that consideration be given to alternatives to the status quo. A potential option would be for Joint Transport Authorities (JTAs) to undertake this task, however there will always be a need for an independent appeal process and, at least in the short and medium terms, registrations should perhaps be with the TC for Wales - but only if resources are provided for this.

The existing fee for a registration or amendment is £60 but it would be both easier and cost-effective if, at least in the short term pending devolved legislation, there was no specific fee charged for a registration in Wales, with a separate provision for a reduction in BSSG if service standards are not met. Service standards should be set by the Welsh Government with provision to ensure appropriate clarity of application with use of IT and effective communication with relevant local authorities. If systems were sufficiently sophisticated, there could be provision for a BSSG element to reflect whatever payment and/or ticketing system suited the Welsh Government.

Safeguarding generally and DBS checks

This is an area where I made a number of recommendations two years ago. It was immediately clear that there was widespread industry support for change which would both increase the level of public protection, and additionally, would be more efficient and effective for industry.

Arrangements for payment of concessionary fares and or BSSG should be based on an assumption that where public funds are provided by the Welsh Government or local authorities, there will be an appropriate DBS check of the driver. The same check might also be required prior to licensing. This would apply to all passenger transport that includes an element of public funding or licensing including:

- section 19 or section 22 permits
- taxis
- private hire licences
- other arrangements including entities utilising digital booking systems and Apps.
- PSVs

It is an anomaly that whilst local authorities insist that drivers who carry children under school contracts have DBS checks, there is no process for standard DBS checks for PSV drivers, in part this reflects the theoretical point that operator licensing is based on trust. Unfortunately the reality is that on occasion traffic commissioners have to take action in respect of vocational licence holders who are unsuitable, including in some cases those convicted of serious sexual offences. Whilst DBS checks are a reserved matter, the Welsh Government could legislate to ensure concessionary fare payments and or BSSG are withheld in the event of failures to conduct proper DBS checks.

Both industry and local authorities have expressed frustration to me on the current arrangements whereby one local authority will often take very different action against the same taxi/private hire drivers when compared with its neighbouring authority. Those holding a licence are also frustrated as if their business covers, say, five different local authorities, there will often be a need for five separate DBS checking processes. Some are more thorough than others and there is inconsistency in application.

Support has been expressed at various industry events for my suggestion that there be a single body for approving individual cases, however if transport is to be organised on the basis of large Joint Transport Authorities, there is a case for this being done on a regional basis if it is not undertaken on a pan Wales basis; the current system of 22 different bodies determining fitness is unsustainable. If there is to be a change, there would be a need for an appeal process, current legislation provides for the Traffic Commissioner for Wales being the person who determines fitness to hold a vocational (PCV) licence, it would assist in consistency of approach if the TC in Wales was also the appeal body for other licensing regimes involving public passenger transport.

Reform of the law relating to taxis and private hire licensing in Wales

The Law Commission for England and Wales produced a comprehensive report on potential changes to the law relating to the licensing of taxis and private hire vehicles across England and Wales, it is yet to be fully debated and in view of the substantial variations in need and because of the powerful vested interests, I do not envisage early legislation for England. The needs and operational difficulties within Greater London are wholly different to the rest of England and Wales, this is likely to frustrate early and effective change within England.

As lead TC on small vehicles and novelty vehicles I was tasked with liaison with the Law Commission in its work in this subject. One of the recommendations from the Law Commission was that passenger carrying vehicles with between 9 and 16 passenger seats should be licensed by local authorities (in Wales this would be the Joint Transport Authority) instead of TCs. We recognised the benefits of such a change, but it would require legislation by the Westminster Parliament and so it is not an option available to the Welsh Government. However I refer to comments above relating to funding arrangements which, if implemented, would ensure more effective control of the minibuses market. It is minibuses that cause a disproportionately high ratio of the operational difficulties for enforcement agencies such as local authorities and the DVSA.

Although PSV operator licensing is not devolved a feature which has a clear crossover with local authority taxi and private hire licensing is that of special restricted PSV licences. The theory behind special restricted PSV licences is a good one; it allows for a private hire operator licensed by a local authority to run registered services using small vehicles where it would be uneconomic or otherwise unsuitable for a large PSV. However current primary legislation does not allow for a traffic commissioner to take account of either finances or repute/fitness to hold a licence, it being assumed that this is addressed by the relevant local authority. In part due to the fact that the two licensing regimes have exponentially different approaches to fitness, it has to often lead to serious abuses. Fortunately there are relatively few special restricted licence holders although in part this is a result of a lack of knowledge as to its functionality and availability. If there was a convergence between the PSV and the taxi/private hire licensing regimes when assessing important issues, then most of the problems relating to special restricted licences would be overcome.

The above reference to special restricted licences is an illustration as to why it would be beneficial to ensure that appeals in relation to taxi and private hire licences in Wales were determined by the Traffic Commissioner for Wales instead of local magistrates as exists currently. This would facilitate both greater consistency (there being only one TC in Wales) and additionally would result in a specialist tribunal with support and expertise to deal with these matters.

Current licensing arrangements for taxi and private hire operators have a separate approval process for the operator, the vehicle and the driver. Whilst the Law Commission pointed to potential advantages in merging approval for operators and vehicles, I envisage advantages for those who licence them in Wales retaining the status quo on for the reasons outlined below. Additionally it would make it easier for the licensing authority to ascertain whether the entity that claims to operate is indeed the operator or whether it is a front for someone else and illegal activity.

TCs deal with a substantial number of taxi and private hire operators as they often seek to hold a restricted PSV licence at the same time, existing legislation provides that they must meet a main occupation requirement so that they can prove that the operation of the restricted licence is not their main business. A pilot exercise undertaken in an area in England has confirmed the suspicions of TCs that a substantial majority number of restricted PSV licences either should not have been issued with a restricted licence or the licence should now be revoked. As restricted PSV licences do not have the requirement for a transport manager they have a real competitive advantage when compared with standard national licence holders. It is also the case that there are very real concerns at the behaviours of many private hire and taxi licence holders where their suitability to hold a licence in the view of TC is often questionable. In large part this arises from the two licensing regimes having such different approaches.

The Welsh Government does not have legal capacity to alter the PSV licensing regime (despite this being much needed) however with its devolved power in respect of taxis and private hire licensing, it is within its gift to address many of the issues. Having the local TC as the appeal body would be of substantial assistance in facilitating consistency across the passenger transport industry.

National standards for taxis and private hire vehicles would facilitate consistency of approach, the Law Commission sets this out well. Current arrangements are unjustifiable with inconsistent and contradictory approaches amongst local authorities. An example of the need for a national standards is when addressing the licensing of limousines and novelty vehicles, it was this specific area of work where I was tasked over a decade ago by my fellow TCs with leading. Occasionally those who have operated limousines have done so for nefarious purposes such as money laundering; a substantial number of those who have operated have done so without any organisation issuing any form of licence. In one extreme case where I was asked to deal with an application in a large English city, the applicant had numerous convictions for offences of operating without a licence and persistently lied when unlicensed vehicles were impounded. I had no difficulty in refusing the application but it was galling to read that individual claiming to the local press that he was an honest businessman who paid his taxes.

Parts of Wales have suffered as result of illegal and unsafe limousines, often they pose a very real danger to the people who are carried. In fairness there are also good operators who run safe vehicles, they (and the public) would be protected by fair, transparent, proportionate and consistent regulation.

Enforcement in relation to illegal limousines and novelty vehicles can be difficult, it would be made far easier if there was a proper licensing regime for limousines addressed by use of a Welsh national standard for limousines. Obviously that standard would not be the same as for ordinary smaller taxi/private hire vehicles.

I also point out that in some urban areas where there are specific issues relating to NO₂ levels and other pollutants, it should be open in some specific areas to have a higher standard that included environmentally cleaner vehicles. This might lead to taxis and private hire vehicles in some cities being electric powered. The need is for national standards within Wales that allow for change'. By way of example it would be difficult to insist on environmentally cleaner electric taxis and private hire vehicles across the whole of Wales with immediate effect, not least because the charging infrastructure is not yet in place. However the needs in the larger cities and those areas with particular issues with NO₂ exceedances should be considered and legislation should be future proofed.

Community Transport and section 19 permits

The White Paper does not ask questions about community transport (including section 19 permits). However they form an essential part of any integrated transport service. The law relating to PSV legislation can be confusing; it is exponentially more so in the case of community transport. The overwhelming majority of community transport operations are undertaken by volunteers who provide an important service for the needy and or those who would not otherwise have access to essential transport, unfortunately the legislation relating to permits does not always achieve what policymakers originally sought.

If community transport is not to be devolved then I comment that there are well over 60 designated bodies to issue section 19 permits, additionally they can also be issued by all

22 local authorities in Wales as well as the TC for Wales. With so many licensing bodies it is no surprise that those who issue licences are not necessarily consistent in approach.

Problems relating to community transport are exacerbated by the fact that until relatively recently permits issued remained in force until they were revoked or surrendered. The Local Transport Act 2008 included a clause that limited the lifespan of any permit issued after April 2009 to a maximum of five years. On expiry of the permit the holder is required to apply for a new one, this allowed for both greater control over the records for permits in circulation and the validity of permits.

The Local Transport Act 2008 also provided for regulations which would have invalidated those permits issued prior to April 2009, unfortunately the Statutory Instrument envisaged by the legislation has not been issued.

A number of bodies who are entitled to issue permits do not do so as they recognise that they do not have specialist expertise in relation to safety and training. Often designated bodies that have authority to issue their own permits apply to the Community Transport Association (CTA). This is a result of the CTA offering a number of excellent training schemes.

As creatures of statute, TCs can only apply the law as promulgated, subject to any interpretation by the higher courts. It is important to apply the appropriate tests in the correct order. The first test applied to an application for a section 19 or 22 permit must be whether any exemption under EC 1071/2009 applies. This is directly applicable European legislation and domestic legislation must be read in a way which gives effect to it and in effect takes precedence over those domestic provisions. Only once an applicant has satisfied an issuing body that they meet an exemption contained within (EC) 1071/2009 do they fall to be considered under the criteria for section 19 of the Transport Act 1985 which allows them to operate vehicles under a permit and are therefore exempt from PSV operator licensing by virtue of section 18 of the Transport Act 1985.

The criteria for section 19 and 22 permits are different, most notably is the requirement that the vehicle is not being used for the carriage of members of the general public nor with a view to profit nor incidentally to an activity which is itself carried on with a view to profit.

However "*Without a view to profit*" is a significantly different test to that for commercial. An applicant might provide evidence to the designated body of the costing involved in the provision of the service, including salary costs, and an issuing body can make a determination on whether the intention is to make a profit. It is important to be clear that it is the intention that is important not the actual outcome, i.e. the failure to make a profit is not evidence that the intention to do so was not there. It may be permissible to make a surplus provided that this is reinvested in the operation or other charitable work. Each case must turn on the evidence provided.

The UK has not legislated to give effect to any derogation relating to a minor impact on the transport market because of the short distances involved. It remains the position that an applicant who seeks to rely on one of the exemptions to Regulation EC 1071/2009 has the legal burden to satisfy an issuing body that it falls within the scope of the exemption, namely:

1. road passenger transport services exclusively for non-commercial purposes, or
2. which have a main occupation other than that of road passenger transport operator.

The DfT has just published its response to the section 19/22 consultation on 15 March 2018. I regret that Traffic Commissioners' Corporate Office was not given notice of this. It refers to ongoing proceedings during which it may not be possible to issue further any guidance on the 'non-commercial' exemption. It has issued guidance on main occupation and proposals for a short distance exemption. See:

<https://www.gov.uk/government/consultations/section-19-and-22-permits-how-to-apply-eu-regulation-10712009/outcome/ec-regulation-10712009s-article-14b-exemption-on-operators-with-a-main-occupation-other-than-that-of-a-road-passenger-transport-operator-worked>

I have previously advised on simple reform which would address the legal obstacles identified, in the meantime if the existing legislative framework remains unaltered, it would be advisable for the Welsh Government to ensure that it (or JTAs) only provided funds to organisations that have permits issued by the CTA and no one else. This would assist in ensuring consistency of approach despite it not being an ideal solution pending fundamental reform. I am aware that the Welsh Government might seek to clarify whether it is empowered to legislate on permits as a devolved matter.

Joint Transport Authorities (JTAs)

I would suggest that existing arrangements with 22 different transport authorities are unsuitable to a modern environment. Whilst some provide a very good service, many simply do not have the staff or expertise to perform this function as effectively as users require. Too often a local authority will have regard to the transport needs of those who live within its area, but not necessarily surrounding areas but in the 21st century transport needs to be planned on a wider strategic level. By way of example a local authority might recognise the need for a park-and-ride scheme for a town or city centre within the authority, however there might be greater benefits with more comprehensive park-and-rides which include shuttle buses to other industrial and or shopping areas in neighbouring districts.

Larger transport authorities (with JTAs or any other model) would allow for less parochial and more ambitious planning. I find it surprising that when there is a large event at the Millennium Stadium in Cardiff ending in the evening, there is no late-night park-and-ride to service those who do not have public transport alternatives to get into the city. Whilst there are buses and trains to Cardiff available for many, that is not the case for all areas, Monmouthshire being a mere example.

I refer to my previous annual reports which have described how if there are not sufficient local authority staff with an appropriate level of transport expertise, there is then the risk that decisions are made primarily on the basis of short-term costs. Invariably this can lead to a downward spiral, with the inevitable consequence of poor quality decision-making. In the case of bus services and school contracts it can drive out the good family operator and afford opportunities to those that seek to cut corners, operating unsafe and unreliable vehicles. Too many local authorities simply do not have the necessary expertise to undertake the work, I give considerable credit to them for admitting that this is so.

Fortunately Wales has a number of dedicated staff with a high level of expertise working for local authorities, I see this when I attend meetings in Wales of the Association of Transport Co-ordinating Officers (ATCO), a body that is linked to the Wales County Surveyors Association. However it will be increasingly difficult to retain this experience. Pooling expertise through JTAs is therefore essential. Specialist knowledge management is such an issue that the Welsh Government might encourage cooperative regional

working pending the establishment of any new JTA. I appreciate that there are some good examples of this currently.

Joint Transport Authorities

Q 1. Do you agree that it is important for local authorities to work together with regard to local bus services? Yes/no? Please explain your answer.

Yes, see above.

Q 2. Please provide comments on the proposed organisational structures. Which is your preferred option and why?

I am of the firm view that the proposals to have JTA(s) are appropriate, however I recognise that the actual number and boundaries might be best decided upon after consultation with local authorities and others.

Recently, on attending a conference on the North Wales Growth Deal, it was revealing to see local authorities recognise the benefits in cooperative working with neighbouring authorities; it was especially interesting to note the support within North Wales for strategic alliances with neighbouring areas in the North of England. On one level North Wales might be part of the Northern Powerhouse and benefit from being part of an association that will drive economic growth across the North of England and North Wales.

It is arguable that there should be one JTA for South Wales, however I recognise that the views and the culture in the south-east of Wales are not always the same as in the south-west of Wales. Economic, cultural and transport links between South Wales and the West of England are comparatively poor when compared with the transport and economic links in North Wales.

The economy of North Wales is very much linked to the North of England, not to South Wales. Similarly industry in South Wales is linked (albeit not necessarily integrated) with the M4 corridor in England.

Any JTA covering Mid Wales is likely to cover a very large geographical area, however it is important that it also includes a sufficient number of the existing local authorities.

Q 3. Is there another organisational structure for JTAs that we should consider? Please describe.

I have no firm view on this.

Q 4. Do you have any comment on the proposal that the Welsh Ministers should be represented on a JTA or any committees of a JTA?

There is a need for the Welsh Government to have an input. The White Paper does not make many, if any, references to Transport for Wales. I assume that if there is to be a coordinating role from a national body, Transport for Wales could fulfil this role.

Q 5. Do you have any comments on the proposals that the Welsh Ministers should have powers to issue guidance and directions, and to intervene where a JTA is failing to exercise its functions effectively?

There should be provision for intervention and/or guidance. Guidance should be both consistent and transparent; intervention is a default power that is needed but hopefully not utilised. Failure to provide a power to intervene might result in piecemeal legislation

following any perceived failure, hence the need to make provision on the setting up of JTAs.

Proposed JTA functions in relation to buses

Q 6. Is the proposed division of national and regional functions appropriate?

See comments above.

Q 7. Should any other transport functions be transferred to a JTA? Please describe.

Please see my comments above in respect of s19 and s22 permits.

Enhanced Quality Partnerships

Q 8. Do you think that legislation is required to secure the benefits of enhanced partnership working? Yes/no? Please explain your answer to this question.

The short answer is yes; it would be an option that could be successful. My experience as a TC within England is that partnership working can produce very good results, although it takes time to develop healthy relationships between transport authorities and operators. I regard the partnership working within the West Midlands of England as successful. Originally there were voluntary partnership schemes, later statutory quality partnership schemes and it took a number of years to develop the expertise and trust. However the outcome is a public transport system that I regarded as good, especially compared with other parts of the West Midland region where shire counties often have relatively poor train and (especially) bus services.

Q 9. Do you agree with our proposals for EQPs, in particular the proposed process for developing and making EQPs? Yes/No? Please explain your answer to this question.

Others may have greater expertise on this.

Franchising

Q 10. Do you think that the proposed scheme provides a more workable option for the franchising of local bus services? Yes/No? Please explain your answer.

I regard this question as essentially a political one and as a TC I do not wish to become involved in the politics of franchising. However it is appropriate that I point to the fact that the attempts to introduce franchising outside of London have resulted in difficulties when encountering issues around the financial cost, including pension costs of the entities that are currently running services that might be taken over.

I pose the question for any public body seeking to introduce franchising, do you have both the finances and the operator licensing expertise to run a successful PSV operation?

Q 11. Do you think there should be a requirement for the assessment to be subject to an independent audit? Yes/No? Please explain your answer.

Yes, as there is a need to test its sustainability.

Q 12. Do you have any other comments on the proposed process for franchising?

I do not seek to make any further comment.

Q 13. Do you have any comments in relation to the proposals for the issuing of permits in circumstances where franchising arrangements are emplaced?

I do not seek to make any further comment.

Q 14. Do you agree that as part of any arrangements to let franchise contracts, specific consideration should be given to how SMEs can be enabled to be involved in the procurement process? Yes/No? Please explain your answer.

Yes. Wales differs from most of England in that a significant proportion of PSV operators in Wales are family businesses. The average size of a PSV fleet in Wales is the smallest within GB. If account is not made of SMEs then it must be inevitable that they will be adversely affected, a number would go out of business.

Q 15. What transitional arrangements should be considered in order to ensure that bus services are not compromised during the process of preparing to franchise?

Uncertainty will inevitably lead to less investment by PSV operators; this is a factor that should be considered.

Local authority bus services

Q 16. Do you think that local authorities should be able to run bus services directly (I.E.in house services)?

This is a political decision, however I point out that the number of local authority arm's-length bus operators within England has reduced, usually this has followed financial difficulties with the relevant local authority deciding that it had other priorities for its limited resources.

Appreciating that devolution has allowed for Wales to increase the number of local authority arm's-length services, I recommend that if this is a realistic prospect for an authority, then an early exercise should be undertaken by local decision-makers; they should seek to speak to those who operate existing local authority owned arm's-length bus services within Wales-and to ask questions about costs including pension funds.

In what circumstances do you think this would be appropriate?

This is a political decision.

What, if any, safeguards do you feel ought to be put in place with in-house services to ensure that no local authority has an unfair advantage in a deregulated market, and why?

There are existing rules relating to fair competition; discussion with existing local authority arm's-length operators within Wales will confirm difficulties that can arise.

I also point out that if a local authority owned arm's length bus company is bidding for a contract against another wholly independent rival, it is reasonable to assume that the independent rival would be tenacious in looking after its commercial interests, if necessary bringing matters to the attention of other regulatory bodies. The point I wish to make is that one needs to think through the potential outcomes when considering setting up an arm's length bus company.

Q 17. Do you think that local authorities should be able to set up arm's-length companies to operate local bus services?

This is a political decision. However the cost options, including on-going costs, must be factored into any final decision to set one up.

In what circumstances do you think this would be appropriate?

Primarily, this is a political decision.

What, if any, safeguards do you think should be put in place with arm's-length bus companies to ensure that no local authority has an unfair advantage in a deregulated market, and why?

I refer to existing law relating to fair competition.

Eligibility age for the mandatory concessionary fares

Q 18. Do you agree with the Welsh Minister's proposal to align entitlement to a mandatory concessionary fares pass with a woman's pensionable age? Please give reasons for your answer.

Yes, it is much needed as reversing the ratio of total monies spent on concessionary fares and BSSG would allow for better services and for services targeted where they are most needed. Compared to the monies spent on BSSG the expenditure on concessionary fares is huge. Better services and more services can be achieved with better targeting.

Q 19. Do you agree that an incremental change is the most appropriate method?

Yes, the experience of the WASPI campaign involving women's state pension age has demonstrated the need to take an incremental approach. Whilst the long term benefits will take longer (unless additional funds are found), an incremental approach is more likely to achieve public support.

Public transport information and monitoring

Q 20. Do you agree with our proposal to require the release of open data on routes, timetables, fares and tickets? Yes/No? Please explain your answer.

Yes. There is a natural reluctance to provide information by many operators, however it is not unreasonable to require an operator to provide the data requested if they also seek to receive concessionary fares and or BSSG.

Q 21. Do you agree with our proposal to enable local authorities to have the power to obtain information on services which are to be cancelled or varied, and where appropriate, disclose this information as part of tendering process? Yes/No? Please explain your answer.

Yes. If an authority is paying BSSG and or concessionary fares, then it is not unreasonable to seek effective communication to facilitate transport planning.

Taxi and private hire legislation

Q 22. Do you agree with our proposal to introduce national standards which will apply to all taxis and PHVs in Wales? Yes/No? Please explain your answer.

With reservations, yes. There should be provision for different standards for different types of vehicle if appropriate - see earlier comments relating to electric cars in those city areas where there are sufficient charging facilities. Similarly there should be recognition that limousines and novelty vehicles are very different to ordinary private hire vehicles so that there should be separate standards.

The need for flexibility in approach is illustrated by issues relating to public health and air quality, including NO₂ levels. In the long term it is not unreasonable to assume that all taxis and almost all ordinary cars would be environmentally clean, possibly electric. However it is not realistic to apply this across the whole of Wales currently. This is a result of current battery technology, but technology is changing.

On the other hand there are geographic areas which have existing levels of pollution, including NO₂ levels where the urgency in addressing public health needs must be a priority over other interests. The High Court has spelt out that when identifying pollution reduction measures the primary obligation is to protect human health by achieving legal limits in the shortest possible time. Considerations such as cost or political unpopularity are not lawful reasons for excluding effective measures, accordingly it is in the public interest if legislation facilitates a safe clean environment for the present and future population. Those areas which have been the subject of litigation should not be tolerating the existing aging diesel fleet which falls short of acceptable standards.

Q 23. Are there any matters which you would like to see contained in any national standards?

The standards need to be sufficiently flexible that they can be amended by the Welsh Government without too much difficulty, after appropriate consultation. Whilst the Law Commission has recommended the introduction of national standards for England and Wales, if they are being introduced in Wales first, it is important to ensure any early lessons, including mistakes, are learnt.

Q 24. Are there any matters which you think should be excluded from any national standards?

At the time of writing this note I am unaware of any.

Q 26. What would be the best approach for determining the content of national standards?

Consultation involving people who genuinely understand the industries affected, as well as those who have regulated them. Currently there is expertise within local authorities in Wales. Where there are clean air zones it cannot be justifiable for taxi and or private hire vehicles to not meet required standards, in these cases it must be unacceptable to allow polluting engines to be allowed with a mere financial penalty to enter a zone; leadership requires the setting of standards.

Q 27. Please provide any other comments or proposals around national standards that were not covered in the above questions.

See comments above.

Enforcement

Q 28. Should a local authority be able to revoke or suspend a licence relating to any vehicle operating in its area, even if it did not issue the original licence? Yes/No? Please explain your answer.

If for this purpose a local authority is a JTA, the answer is yes. However see comments above relating to the appeal process involving the TC for Wales.

If it were decided that a local authority (or JTA) was not able to revoke or suspend, consideration should be given to allowing it to ban that licence holder (or driver) from operating/driving within its area.

Q 29. Should a local authority be able to issue a lesser sanction in relation to any vehicle operating in its area, even if it did not issue the original licence? Yes/No? Please explain your answer.

My answer is the same as that for the above question.

Q 30. Please provide any other comments or proposals around enforcement that were not covered in the above questions.

Often there is difficulty in enforcing as a result of relatively few enforcement staff. This might lead to opportunists deciding to operate in breach of rules. I suggest consideration be given to providing for impounding of vehicles which are operating without a valid licence. There would be a need for safeguards and there would also be a need for an appeal process (TCs are the appeal body in the case of impounding of HGVs and PSVs where there has been illegal operation without a licence).

I refer to my earlier comments relating to a potential role for the TC for Wales. There are also opportunities for joint working with other agencies that should improve enforcement. See my above comments relating to standard DBS checks, there should be provision for intelligence being shared between JTAs within Wales.

Information sharing

Q 31. Do you agree with our proposal to create a database or make other arrangements for relevant safeguarding information to be shared? Yes/No? Please explain your answer.

Yes, see earlier comments.

Q 32. Please provide any other comments or proposals around information sharing that were not covered in the above questions.

Information sharing will need to be managed carefully due to data protection legislation. It is possible that Transport for Wales could play an important role in this.

Joint Transport Authority

Q 33. Do you agree with our proposal to redirect all of the existing taxi and PHV licensing functions away from local authorities and into a national licensing authority (Option A)? Yes/No? Please explain your answer.

Unequivocally, yes. See my comments above, this will lead to better protection of the travelling public.

Q 34. Do you think that local authorities should continue to have responsibility for taxi and PHV licensing (Option B)? Yes/No? Please explain your answer

No, although I recognise parochial interests might seek to retain the status quo. It is a status quo that has led to unjustifiable inconsistency of approach; it does not assist in protecting the fare paying travelling public; and, it has contributed to the difficulties in securing clean air in those areas where firm leadership is required from politicians to address pollution.

Q 35. Please provide any other comments or proposals around responsibility for taxi/PHV licensing that were not covered in the above questions.

See my comments above relating to the role for the TC for Wales.

Other Questions

Q 36. We would like to know your views on the effects that the legislative proposals set out in this paper would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

Consultation was commenced a couple of years ago by the Welsh Language Commissioner on standards for the PSV industry, other matters appear to have been prioritised.

What effect do you think there would be? How could positive effects be increased, or negative effects be mitigated?

I do not profess to have the expertise to answer this question.

Q 37. Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

See answer to above question.

Q 38. We have asked a number of specific questions. If you have any related issues which we have not specifically address, please use this space to report them:

An issue which is not addressed in the White Paper is that relating to complaints and queries from the travelling public. There is an urgent need to set up a body which can be recognised within Wales as one to pose queries and or complaints. Until the Transport Act 1985 was implemented, TCs across GB decided whether bus services were needed in a local area. This is now deregulated and it is for local authorities to provide a subsidy if there is a gap in the market. Too often I receive queries from the public who write to me assuming that I have responsibility and or power to determine whether a bus should be operated in a local area or on a specific street. Worryingly I occasionally receive correspondence from local councillors who claim to have been told by their officers that they should write to complain to me about a matter that is not within my jurisdiction - but is very much a matter for that local authority if it chooses to provide an element of subsidy for a service.

In the first instance one should expect that complaints should be made to the local bus company that provided a service, however the travelling public do not have good information as to where or how to complain if they remain dissatisfied. Bus Users Cymru, which is funded by the Welsh Government, provides a useful service, however it is overseen by Bus Users UK which has moved to the laudable position where it champions disabled and disadvantaged passengers. This can lead to a gap where there is no body to address general complaints and queries about services within Wales. This is an issue that should be addressed by Transport for Wales in one way or another.

Please enter here:

n/a

Responses to consultations are likely to be made public, on the internet or in a report. If you prefer your responses to remain anonymous, please tick here:

I am content for my response to be in the public domain.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a long horizontal flourish underneath.

Nick Jones
Traffic Commissioner for Wales
Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru

26 March 2019