

BSWB 22 - Evidence from: Ben Colson, independent consultant

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Gwasanaethau Bysiau (Cymru) | Bus Services (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

The principle of driving up bus use thereby to improve local economies and the environment with associated improved health and wellbeing outcomes is welcome. Since the 1980s the policy surrounding the provision of bus services in the UK has been that of them being a business which play no part in the infrastructure of the nation. This started to change in the wake of the 2010-11 austerity budget and the cuts to devolved and local authority expenditure and, as in English local authorities, transport was a non-mandatory area of expenditure, it was inevitable that such funding would be placed under the severest pressure. It is therefore not surprising that the increasing paucity of buses, especially at first in rural areas, became a growing political issue, made the more so by the deliberate reduction of car driving costs by the same successive governments, through the freezing and then reduction of fuel duty for over a decade. The question is therefore not whether the principle aims and objectives are supportable but whether the franchising of bus services in particular is the best way to put bus in its rightful place, as a mechanism to deliver other higher policy goals. It is one way to achieve it, but is it the best way? I do not believe so, because it is fundamentally expensive and, maybe more importantly, it moves the financial risk from private sector businesses used to managing risk to local and governmental authorities which have a lesser track record in financial risk management.

Of the UK's two other franchise areas, London is experiencing falling patronage and Manchester has acknowledged an annual gap of £226m between fares income and costs of providing the service. In both instances there is a much lesser rural hinterland with its inherently lower income, so the revenue-cost gap has the potential to be much greater in Wales.

In all areas – including in those parts of Scotland where franchising is currently envisaged – the common theme has been a lack of investment in measures to tackle congestion, or more particularly to remove buses from it. Where that has

been done consistently for decades – cities such as Brighton and Nottingham to name two – a vibrant, all-inclusive commercial bus service is provided a minimum cost to local government. You cannot undo the omissions of the past but you can resolve instead to move forward in the future, that way to deliver your goals more cost-effectively and with less risk to the Welsh government and ultimately its tax-paying residents.

It is my considered view that the case for regulatory reform to deliver the changes to the role the bus plays in society and the economy is not made and that other, less costly and certainly with less public financial risk, are available within the current regime. It is notable that these have not been fully explored.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - Key concepts and general objectives (sections 1 to 4)

The five objectives set for Welsh Ministers is welcome and supportable. However the real test is whether they are deliverable and I do not believe that they generally are.

- I have already made reference to congestion. Its impact on bus service provision is corrosive and will undermine success in delivering the well-intentioned outcomes. Research shows that a 10% decrease in operating speeds results in an 8% increase in operating costs. A 10% reduction is readily witnessed just as a result of sustained roadworks in a concentrated area, and if this risk to the public finances is to be mitigated, robust, enforceable and consistently enforced management of roadworks will be necessary. I doubt the political or officer will is really there to deliver.
- Bus satisfaction amongst users is higher in Wales than in England (the 2024 Transport Focus survey showed 84% compared with 83%).
- Land-use and transportation issues have to be addressed. Planning Policy Wales (2024) states at section 4.11 “The Planning System should enable to access jobs and services through shorter, more efficient and sustainable journeys, by walking, cycling and public transport.” This is laudable but my view is that, as in England and Scotland, the same sentiment is absent from delivery on the ground, making new housing developments in particular car-dependent for future generations, contrary to United Nations policies to which the UK government has signed-up.
- Ministers will have to develop policies in a truly integrated way if the objectives are to be met. Policy development and implementation in one area of activity will always bring consequences, whether intended or not, in other policy areas.

- Policies to ‘protect’ the important role of smaller bus operators – SMEs – have failed in London and more recently Manchester. Soothing words will not save them in Wales. ALBUM, the body which represents this sector and municipal operators, has engaged with the English government to express concern. Evidence is mounting that there are four reasons why SMEs fail to win franchises and without any commitment to address these specifically it is inevitable that SMEs will fail in Wales too:
 - The impracticability of putting together a high-cost bid team to meet the exacting yet theoretical requirements of tendering (and with fewer franchises over which to amortise the cost of such a team)
 - The complexity and bureaucracy of the bidding process. In Manchester it was necessary to produce an Anti-Slavery Policy whilst legislation does not place this duty on businesses with a staff of less than 250 employees.
 - Depreciation policies applied by corporates whereby they can move resources from franchise to non-franchise areas in the event of franchise contract loss, an option not widely available to smaller operators. I have calculated that, for contracts of 8 year duration, this will double the daily cost.
 - Franchising authorities require substantial financial guarantees from franchisees. These are disproportionate for SMEs where the amount concerned has to be taken out from working capital, placing the entire business at risk of failure, whilst in corporate businesses it can be treated as a “parent company guarantee” thus not impacting working capital.

3. What are your views on the Bill’s provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 2 - Functions of the Welsh Ministers relating to local bus services (sections 5 to 20)**

The functions set out the steps towards franchising and to that extent they are fit for purpose and deliver the stated policy intentions. However, there is no evidence that there has been a robust process leading to the decision to follow a gross cost contract model. Indeed, this model places greatest financial risk on the public sector and least on the private sector, a seemingly bizarre and maybe almost irresponsible proposition.

There are a number of issues which should be considered:

- The role of passenger representation in the franchising process. It is not the case that local authorities know better than the people themselves what it is they want from a bus service, and therefore it is essential that there is a structured

mechanism to properly feed those needs and aspirations into the planning process.

- Consideration of the relative merit of gross and net cost contracts. Under 'conventional' 1985 Act section 63 contracting of bus services, experience indicates that net cost contracting serves the customer best by engaging the provider in a quasi-ownership role. Harnessing the market and operating knowledge of operators is key, both at the time the contract specification is being worked up and in delivery.
- Franchise "lite": A previous iteration of this Bill, which fell in 2020, included provision for Welsh Partnership Schemes giving Ministers greater control of the network without full-on transfer of financial risk. Department for Transport Guidance for English local authorities entitled "Setting up a bus franchising scheme" (March 2024) is clear that franchising can encompass a range of different options from the full-scale Manchester model, through individual route contracts delivered in a closed market (the London model) to lighter options including franchising specific key roads or corridors, routes operated commercially under a permit scheme, and others, the key point being to enable a stable service pattern, to a specification determined by the local authority as proxy for the community, to exist without the risk of commercial cherry-picking by operators.
- Direct Award: there may be a limited case for direct award of hitherto commercial routes to established operators for a predetermined period of time to enable them to depreciate their existing fleets without concern of confiscation, causing them to sell vehicles at a book loss (vehicles tend to depreciate faster in earlier years although conventional accounting practice, accepted by HMRC, is for straight-line depreciation over a set number of years).
- Transition arrangements – there are significant issues to move from an open-market to a closed one under franchise, and these appear not to have been fully addressed. These include depots, vehicles, IT, TUPE (see answer to question 7), cross-border services into England and action in the event of a legal challenge to enforced business closure.

4. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 3 - Restriction on providing local bus services (sections 21 to 24)**

It is legislatively simple to ban operators from providing non-franchised bus services in the nation. What is more difficult is to re-start such routes in the event

that, for whatever reason, the franchise system fails to deliver for its residents. The English guidance referred to in question 3 states what local authorities should do in the event of revoking a franchise scheme, most likely due to financial shortfall. In the case of Wales, this may more likely be at local authority level. However the English wording concerns only the legal steps the authority should take and is silent on what outcomes users of bus services can expect. This may be particularly pertinent in more rural areas, where the eradicated SME sector would likely have been more prevalent. With them gone, it is more likely that a decision to revoke will leave residents of such areas with either less a service than before franchising, or none at all.

Legal, economic and practical issues are involved. A decision to franchise closes the market for bus services. That is not the same as a decision to revoke a franchise re-opening the market. There is no provision for the status quo anti to be retrospectively applied. How, therefore, are replacement routes identified, how do operators claim them, what Welsh government payments are eligible to be made to operators, what concession fare reimbursement paid to them, and by whom? How can it be assumed that the Traffic Commissioner will register a new service at short notice in these circumstances? How can an expelled operator reclaim business which was confiscated and restart operating at short notice? How can residents be assured of their journeys to work, school, health facilities etc? Will all of these processes be overseen by the same officers who oversaw the original failure?

The more rural the area, or the extent of rurality across the franchise area as a whole, the greater the risk of failure. Analysis of Cambridge and Peterborough Combined Authority's (CPCA's) proposed service specifications show a broadly similar level of service (and investment) in the two city regions, some uplifts in smaller towns and on inter-urban routes, and a significant uplift (and investment) in the harder to reach deep rural areas. Their aspiration is very similar to your "every village, every hour every day". The ideal is understandable, yet it ratchets up the financial risk disproportionately. Thus the greater the rurality the higher the financial risk and the possibility of revocation.

5. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 4 - Information and data (sections 25 to 31)**

There are two types of information and data, that provided by operators to local authorities to help them plan their new franchise route network and service

patterns, and that provided to the customers and wider public to help inform their decisions whether to use, or mode shift to buses.

As regards data provided by operators to authorities, it is right that there is a duty on operators to provide it, but there also must be a duty on the government, its agencies and local authorities to respect the confidentiality in which it is provided. Providing information to bus users and the wider public is a very different issue. The more information, provided in a timely, relevant, understandable and accessible manner is essential to build confidence and for the growth of bus use. Understandably since the impact of the COVID pandemic and rebuild from it, operators have focused their efforts on easy to change and cost effective means of disseminating information, it has reduced access to the product – for example empty bus stop displays and no printed material – and a duty should be placed on local authorities to broaden the way in which it is made available. Welsh Government should actively consider the use of CIL to fund this essential activity.

6. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 5 – Local authority powers and duties (sections 32 to 34)**

Local authorities are closer to the market than Transport for Wales can ever be and it is therefore essential that their role, and that of their specific officers, is identified and 'protected' in the transition to, and beyond, franchise. This is especially so where, as the Regulatory Impact Assessment provides for, local authorities can join together to form wider franchising bodies.

7. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 6 – Miscellaneous and general (sections 35 to 44)**

Three issues arise here – some may be considered appropriately in other sections:

- The rights, responsibilities and role of existing and especially newly created municipal operators. Whereas those municipal operators which existed at the time of enactment of the 1985 Transport Act were required to be arms-length from the owning authority, this appears not to be the case now. This gives rise to

significant governance and competition issues as well as adding significantly to the financial risk to which local taxpayers are exposed. This is currently being considered in the Local Bus Services (2) Bill in the UK Parliament.

• The clarity you provide surrounding TUPE is welcome, but it may not legally be as simple as that. Where a business sells all or part of its operation to another, then those staff directly associated with that operation retain their rights under TUPE. Likewise if a contract moves from one supplier to another. However, that is not the case here; it is far from clear whether it applies if the decision is to confiscate businesses and franchise. Firstly, the business is being confiscated – not envisioned in the Transfer of Undertakings (Protection of Employment) Regulations 2006 – and the key is in the words here are “transfer” and “undertakings” neither of which apply. Secondly, the replacement facility (the operation) may not be the same as, or similar to, that seized. Thirdly, many SME business rumps will not be viable without their bus operations and will close, triggering redundancy payments. If it is deemed TUPE does not apply, or in the case of subsequent SME closures, the financial exposure to pay redundancy by the dismissed operator could be substantial, and lead to legal claims against the authority or government for compensation.

In practice, in Manchester, where the authority deemed TUPE did apply, many drivers preferred to remain with their existing employer and move from one part of the city to another, creating considerable shortages of staff and managers in some areas, whilst in others there was poorer route and market knowledge. This experience led to a deterioration in service delivery standards in the transition period.

• The Transport (Scotland) Act 2019 includes a requirement for a franchise scheme to be approved by a panel comprising the Traffic Commissioner for Scotland sitting with two independent experts. This gives independent oversight and a business certainty that the case for regulatory change has been properly made, and in the case of Wales now that that decision has been made, properly implemented. This has considerable significance given that business confiscation in this way is almost without precedence: getting it wrong has the potential to send significantly negative signals to other private business sectors that provide services to the nation, such as dentists and chemists. I commend such an arrangement.

8. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

I believe there are significant potential barriers to the implementation of bus franchising which the Bill has failed to make proper provision for. These have been

covered in my previous narrative, but for clarity are:

- A proper appraisal of the costs and revenue risks to public authorities of the franchising of bus services. The Regulatory Impact Assessment can be criticised in multiple areas for the optimistic simplicity of its approach rather than also including consideration of a worst case – or 25% - scenario and how to address it.
- A proper appraisal of the transfer of financial risk from private to public sector and the impact of Welsh tax and ratepayers.
- A proper provision for what happens, legally, financially, economically and practically to ensure residents can continue to go about their lives with minimum interruption in the event of a local franchise scheme being revoked for whatever reason – most likely its financial failure.
- A failure to provide a legal route to address congestion issues, giving the appropriate responsibilities to local authorities and placing duties of performance on them.
- A failure to properly bring together land use and transportation planning.
- A failure to provide clarity as to how the role of SME bus operators is to be protected in a franchise regime.
- A failure to properly appraise alternatives to gross cost franchising, including the range available to English authorities in the Department for Transport Guidance.
- A failure to consider practical transition arrangements including the option of Direct Award.
- A failure to address what happens in the event of a legal challenge to the enforced closure of a legitimate business.
- The inevitable likelihood of over-promising the beneficial outcomes of reform and then under-delivering against them (to an extent as has happened in Manchester).

9. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

I have no comment to make on this.

10. Are any unintended consequences likely to arise from the Bill?

I particularly do not see anywhere, including in the Regulatory Impact Assessment, a rational link being made between the narrative on the perceived shortcomings of the existing bus network provided under the current regulatory regime and that regime itself. Put simply, the case for change has not been made. I have raised at Question 7 the issue of TUPE which I believe is legally far from

straight forward. Once a tender has been lost by an operator, and especially an SME, if it has to close its business and other indirect staff become redundant, then TUPE doesn't apply as there is no undertaking left to transfer. This requires further clarification to avoid a real and hurtful unintended consequence.

This, coupled with the more detailed failures of the proposed legislation to address specific issues outlined in answer to Question 8 gives significant gravity to the potential for unintended consequences, with implications for the wellbeing of residents, local economies and the environment.

11. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

I refer to the Regulatory Impact Assessment and note:

- Much of the evidence base is out of date – it draws on work by the (then) Competition Commission which is now largely irrelevant, it clearly uses revenue and cost data which predates the Covid pandemic (revenue) and impacts of the Ukraine war (cost). It is therefore not a true assessment of the impact of regulatory change going forward. In particular, staff wage costs appear grossly under-estimated.
- It predicts that passenger and therefore revenue growth can be derived from within the existing network mileage is open to challenge. Practitioners will be aware that there is scope to increase revenue at the margin but that this is more likely through higher yield from existing customers rather than mode shift to bus by new customers. Yet without mode shift the claimed decarbonisation benefits will not be realised.
- It predicts that other benefits, such as faster journey times and infrastructure improvements, can only be delivered through regulatory reform without modelling the counter-case that it can be delivered through the existing regulatory model. I contend it can be.
- It fails to make a proper, objective assessment of the extent, cost and risk of delivering real improvement to residents through Statutory (Enhanced) Partnership models.

12. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

There are countless questions of detail which are unanswered and it may be that this is not the point in the process to raise them. However one does cause considerable concern, that of cross border services into England. The issues are such that it is reasonable to expect the Welsh Government to make absolutely clear its intention which should, without exception, be to ensure the continuance of such routes. However this then requires explanation on how various issues will be addressed, and as it is the Welsh Government changing the regulations, it is for it, and it alone, to transparently address these issues. They include:

- How do the two regulatory regimes work in practice at an each side of the border.
- How is it ensured that the same operator that runs commercially in England to the border also win the corresponding part of the route under franchise in Wales.
- Which authority sets service specification standards – and in fact how do they exist in England in an open market.
- How is funding – such as BSOG in England and future Welsh equivalents – applied to what are, in part at least, commercial services.
- How is funding of concessionary fare reimbursement addressed.
- How is data provided and to which authority.
- How is information for the public produced and by which authority.

These are fundamental issues and cannot be left unaddressed.