

**Environment and Transport Committee****05 October 2011****HSE PROPOSAL FOR EXTENDING COST RECOVERY**

Report Number : ES-17-11-F1

**Executive Manager – Environmental Health  
and Trading Standards****Infrastructure Services Department****1.0 Summary**

- 1.1 The purpose of this report is to highlight the Health and Safety Executive (HSE) paper “HSE Proposal for Extending Cost Recovery” and proposes a draft response to the consultation. The deadline for responses to this consultation is 14 October 2011.
- 1.2 Members considered a report in March 2011 when the HSE first proposed cost recovery to local authorities at that stage known as Fee for Fault, and requested a further report as details became clearer. (Infrastructure Committee: Min Ref 17/11).
- 1.3 The consultation proposes that when an inspection of premises identifies a material breach of legislation, (i.e. not a paperwork fault but one that could result in someone being injured in an accident), they will be charged for the inspection and preparation of letters or enforcement notices which are issued. It is also proposed that following an accident notification which results in an investigation, the cost of the investigation will be recharged to businesses.

**2.0 Decision Required**

- 2.1 Members are asked to consider the HSE proposals and approve the proposed response in Appendix 1, paying particular attention to the consultation on the proposal that local authorities should be included in the duty to recover costs for enforcement of health and safety in businesses.

**3.0 HSE Proposals**

- 3.1 The HSE propose to extend the range of activities for which they recover costs, including a duty to recover costs where duty holders are found to be in material breach of health and safety law. The current proposal is that fee for intervention would only apply to the activity undertaken by the HSE and would not apply to the activity undertaken

by Local Authority officers. This is not finalised and the HSE is continuing to seek the views of Local Authorities in this consultation document. In light of the consultation responses, and subject to the necessary legislation being introduced, the proposals could be amended to require Local Authorities to recover the costs from their interventions from as early as April 2012.

- 3.2 The Government and the HSE Board propose that a duty should be placed on the HSE to recover costs where duty holders are found to be in material breach of health and safety law. If the duty holder has breached health and safety law and a requirement to rectify the breach is formally made in writing, (e.g. by way of improvement and prohibition notices, electronic mail or letter), the HSE would recover all of the costs of that intervention. This is known as fee for intervention. Compliant duty holders would pay nothing nor would duty holders in technical (non-material) breach of the law.
- 3.3 In March 2011 the Department for Business Innovation and Skills announced a “moratorium from all new domestic regulations for three years for businesses of less than 10 employees and for genuine new start ups”. Ministers have confirmed that the moratorium will not apply to these proposals for cost recovery, other than in the following circumstances: a self-employed duty holder will not be subject to cost recovery unless, in conducting their undertaking, they expose any other people to risks to their health or safety. This moratorium will only apply to costs that the HSE does not currently recover.
- 3.4 To implement fee for intervention, the HSE is proposing to replace the Health and Safety (Fees) Regulations 2010 with new regulations. In addition to carrying over the existing fees, it is anticipated that these new regulations would place a duty on the HSE to recover the costs of its interventions under the Health and Safety at Work etc Act 1974 and relevant statutory provisions (hereafter referred to as health and safety law). Health and safety is a reserved matter and as such all the options for change proposed in this consultation document and the accompanying impact assessment, would be applicable throughout Great Britain (Scotland, England and Wales).
- 3.5 The underlying policy of recovering costs for the HSE’s intervention through the introduction of fees where there is a material breach of the law has been agreed by Government and is therefore not in question in this consultation. Instead this consultation document seeks views on the systems being proposed by the HSE for how it would implement this policy.
- 3.6 Importantly the duty being proposed would mean that the HSE would not have discretion on whether to apply a fee for intervention. The HSE would have a legal duty to recover the cost of its intervention activity where there is a material breach of health and safety law. Costs would be recovered from the start of the intervention during which the material breach was identified up to and including the point where intervention in relation to that breach had been concluded. In addition to the initial intervention, the costs are anticipated to include any related follow-up interventions (e.g. site visits, phone calls), the provision of any specialist assistance needed, the costs of writing

letters and reports and drafting and issuing improvement or prohibition notices.

- 3.7 An averaged hourly fee for intervention rate, currently estimated at £133, would be used for all HSE staff. Cost recovery would stop when a case is referred to the Procurator Fiscal. Under Scottish Law, prosecution costs may not be recovered. The HSE have estimated some costs for interventions detailed below

#### HSE Figures

<b>Intervention</b>	<b>Estimated Averaged Costs Recovered</b>
Inspection with no action taken	No costs will be recovered
Inspection which results in a formal letter	Approximately £750
Inspection which results in an Enforcement Notice	Approximately £1500
Investigations	Ranging from approximately £750 through to several thousands of pounds to, in extreme cases, tens of thousands of pounds.

- 3.8 Disputes may arise concerning the costs to be recovered or the regulatory enforcement decisions made. To focus on assisting duty holders with genuine disputes, the HSE proposes to recover the costs of handling disputes where the dispute is not upheld. It is proposed that this is based on the hourly rate relevant to the intervention multiplied by the time taken to resolve the dispute. For example, a dispute regarding an inspection letter could take two hours of HSE staff time to resolve: 2x fee for intervention hourly rate £133 = £266. If the duty holder dispute is not upheld, the costs would not be refunded and the duty holder would still be liable for the full amount of the outstanding HSE invoice(s) plus the additional cost of handling the dispute. Where a duty holder dispute is upheld, the costs would either be offset against any outstanding HSE invoice (if applicable) or refunded in full.
- 3.9 It is anticipated that the new regulations would place a 'duty' on health and safety regulators to recover costs. If the new regulations applied to both HSE and Local Authorities, cost recovery would become mandatory for HSE and Local Authorities.
- 3.10 Whether Local Authorities should be made to recover their costs under this fee for intervention policy is a complex question and one on which there are differing views within the Local Authority community. In light of this, the proposals outlined in this consultation are only intended to apply to the HSE and not to apply to equivalent work undertaken by Local Authorities. This, however, is an issue on which the views of consultees are sought. The HSE will continue to engage and consult with Local Authorities to seek their views during the public consultation. In light of the consultation responses, and subject to the necessary legislation, the proposals could be amended to enable Local Authorities to recover the costs of their interventions from as early as April 2012.
- 3.11 The cost-recovery hourly rate applied may vary across Local Authorities owing to local factors, and varying overheads and costs, but

the HSE have assumed their costs will be, on average, similar to HSE's, so have estimated the rate calculated of £133 an hour. If Local Authorities have to apply these charges then the annual estimated income is approximately £15.9 million per year across the whole of Great Britain. This estimate is towards the upper end of the range of possibilities.

3.12 The anticipated impacts of this approach are:

- Financial penalties for material breaches in legislation will help to secure compliance ensuring the health and safety of workers in Shetland.
- Businesses compliant with health and safety law will not be charged any fees.
- Shetland Islands Council needs to maximise and explore new opportunities for cost recovery; the income would support the cost of delivering this enforcement role.
- There is concern nationally amongst Health and Safety Professionals and industry bodies that the scheme could act as a barrier to businesses seeking information and assistance from the local authorities. The Council will therefore propose in their consultation response that when an advisory visit is requested which may result in an advisory letter/statutory notice this will not result in cost recovery.
- There is the danger that the level of charging mentioned in the consultation could affect business viability, especially in the current financial climate. The scheme is inherently more expensive for small businesses. The cost of an investigation in relation to a smaller company could bankrupt the business. A Fixed Penalty approach to non-compliance with advice would be more equitable as all duty holders would have the advice to act on rather than assuming that small business holders, community halls associations and voluntary groups may have the knowledge to be compliant with the law.
- As a small Local Authority, the set up and running costs are likely to be relatively high in relation to any income collected.

3.13 The consultation asks for information on the cost of implementing a scheme within the Local Authority; however there are no detailed costs available as this would be the first time such a scheme was applied.

## **4.0 Implications**

### Strategic

4.1 Delivery On Corporate Priorities – Health and Safety advice, education and enforcement contributes to the safer objectives in the Community Plan.

4.2 Community /Stakeholder Issues – Customer feedback questionnaires indicate that businesses welcome the support and advice that they receive during health and safety inspections, and are highly satisfied by the service provided by Environmental Health. Introducing fee for

intervention may alter that relationship and make businesses less willing to seek advice and support to comply with the law due to fear that they may incur costs. This may create a dual approach where Food Safety and Environmental enforcement does not involve fees but Health and Safety does. This financial year to date 14 letters detailing material breaches have been issued along with 1 Prohibition Notice, 1 Improvement Notice and 4 accident investigations. This would result in income of around £16,000.

- 4.3 The HSE database shows that they have issued 27 enforcement notices in Shetland since 2007, this would have been a cost to the Shetland economy, under this new scheme, of at least £40,500, with no way to quantify the number of letters issued to businesses by the HSE.
- 4.4 Policy And/Or Delegated Authority – In accordance with Section 2.3.1 of the Council's Scheme of Delegations the Environment and Transport Committee has delegated authority to make decisions on the matters within approved policy and for which there is a budget. The Environmental Health Enforcement Policy states that officers should guide support and advise businesses to comply with the legislation, the mandatory Fee for Intervention approach does not sit comfortably with this Enforcement Policy.
- 4.5 Risk Management – The Council may be subject to financial penalties where the HSE inspections indicate that there is a material contravention of the health and safety legislation as detailed above.
- 4.6 Equalities, Health And Human Rights – None.
- 4.7 Environmental – None.

#### Resources

- 4.8 Financial – The Fee for Intervention approach if applied to local authorities would be a source of income estimated to be around £30,000 a year. This would come with increased administrative costs to invoice and recover the fees. As the HSE are also trying to seek a reduction in the number of inspections that local authorities carry out, as they have less resources themselves to apply to inspections of businesses. If the number of inspections reduces as proposed by the HSE the administration burden increases for cost recovery. The Council itself could incur a fee for interventions if the HSE inspectors find a material contravention during an inspection of the Council.
- 4.9 Legal – There may be new regulations which will create a new duty on local authorities to recover their costs for enforcement of health and safety interventions.
- 4.10 Human Resources – None.
- 4.11 Assets And Property – None.

## 5.0 Conclusion

- 5.1 The HSE are consulting local authorities on the implementation of fee for intervention for non-compliance with health and safety legislation. Whilst at this stage it is intended this would only apply to the HSE, the HSE are seeking views in the consultation as to whether local authorities should be included in the cost recovery proposals. This report sets out the proposals and impacts of the proposals. A draft response has been prepared and is attached as Appendix 1 (section 2 of the form only). Members are invited to discuss the report and approve the draft response, which will be amended as necessary to accurately reflect the views of Members on the consultation.

For further information please contact:

Maggie Dunne, Executive Manager - Environmental Health and Trading Standards  
01595 744841 [maggie.dunne@shetland.gov.uk](mailto:maggie.dunne@shetland.gov.uk)  
27 September 2011

### List of Appendices

Appendix 1 – Response to HSE.

### Background documents:

Infrastructure Committee ([Minute Reference 17/11](#)).

The consultation paper on “HSE Proposal for extending cost recovery.” is available at [www.hse.gov.uk/consult/live.htm](http://www.hse.gov.uk/consult/live.htm)

END

**Health and Safety Executive****HSE proposal for extending cost recovery****Completing this questionnaire**

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes or click on the square grey boxes to select an answer (eg 'Yes' or 'No').

**Respondent's details:**

<b>Name:</b>	Maggie Dunne
<b>Job title:</b>	Executive Manager –Environmental Health and Trading Standards
<b>Organisation:</b>	Shetland Islands Council
<b>Email:</b>	maggie.dunne@shetland.gov.uk
<b>Street:</b>	Grantfield
<b>Town:</b>	Lerwick
<b>Postcode:</b>	ZE1 0NT
<b>Telephone:</b>	01595 744841
<b>Fax:</b>	01595 744802

### Size of organisation:

Choose one option:

Not applicable <input type="checkbox"/>	1 to 9 employees <input type="checkbox"/>
10 to 49 employees <input type="checkbox"/>	50 to 249 employees <input type="checkbox"/>
250 to 1000 employees <input type="checkbox"/>	1000+ employees <input checked="" type="checkbox"/>
Self-employed <input type="checkbox"/>	

### Confidentiality

Please put a cross in the box if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)

☐

### What is your type of organisation:

Choose one option

Industry <input type="checkbox"/>	Local government <input checked="" type="checkbox"/>
National government <input type="checkbox"/>	Non-governmental organisation <input type="checkbox"/>
Non-departmental public body <input type="checkbox"/>	Trade union <input type="checkbox"/>
Charity <input type="checkbox"/>	Trade association <input type="checkbox"/>
Academic <input type="checkbox"/>	Consultancy <input type="checkbox"/>
Member of the public <input type="checkbox"/>	Pressure group <input type="checkbox"/>
Other <input type="checkbox"/>	

If 'Other' please specify:



**In what capacity are you responding:**

Choose one option:

An employer ☐An employee ☐Trade union official ☐Health and safety  
professional/Safety representative ☒Training provider ☐

**1. If you do not agree with the proposals outlined in this consultation document for implementing the Government and HSE Board policy of cost recovery please offer reasons for your disagreement and suggest an alternative proposal for delivering cost recovery?**

It is officers experience that businesses do not wilfully ignore the law, breaches tend to be the result of ignorance or misunderstanding. The approach taken locally has been to advise, support and guide businesses to compliance and only take formal enforcement action when the risk is great or the educative approach has failed.

If there are to be charges raised in relation to non compliance then a fixed penalty scheme would be fairer, this could be used where a business has already been advised of their non-compliance and then fails to comply.

**2. Were you clear about how the cost recovery proposals would operate?**Yes ☐No ☒**If No please explain the reason for your answer.**

It is not clear those duty holders who approach the Local Authority/HSE for advice whether the intervention would be chargeable, if a visit were carried out. If the cost recovery proposals only applied to duty holders who were a part of the annual programme of inspections.

**3. Do you agree with the extent of the regulatory activity for which HSE would recover its costs?**

Yes ☒

No ☐

**If No what regulatory activities should HSE recover costs?**

**4. Do you agree with the proposals for when these costs would be incurred?**

Yes ☒

No ☐

**If No, please explain the reason for your answer.**

**5. Do you agree with the model used for setting the hourly rates for cost recoverable work?**

Yes ☐

No ☒

**If No, please explain the reason for your answer.**

There is no recognition of the impact the scale of the costs will have on small businesses, charity shops, churches, community run voluntary activities and community halls.

**6. HSE will not use cost recovery to drive intervention approaches. Other than clearly stating this policy and the continued application of HSE's Enforcement Management Model and Enforcement Policy Statement, how else do you think that HSE can reassure duty holders it will not use cost recovery to drive its intervention approaches?**

**7. Do you agree with the two level dispute process outlined in this consultation document?**

Yes ☒

No ☐

**If No, what alternative system would you propose to ensure a practical, fair and transparent dispute process?**

Dutyholders may feel the threat of the dispute fee will be too great to challenge the intervention fee where it is unfair.

**8. Do you agree that Containment Level 3 and Containment level 4 containment laboratories should be exempt from fee for intervention for a short interim period until the SRF is implemented?**

Yes ☒No ☐

**If No, can you explain why you believe they should not be exempt?**

**9. Do you agree with the proposal that HSE recovers full costs in relation to Boreholes, irrespective of material breach?**

Yes ☒No ☐

**If No please explain the reason for your answer.**

**10. Do the assumptions made in the impact assessment look reasonable in relation to the estimates made for:**

Familiarisation costs	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Cost of processing invoices	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

**10a. What are your estimated costs for familiarisation?**

Cannot be determined until detail of expectations and requirements is available

**10b. What are your estimated costs for processing invoices?**

Cannot be determined until detail of expectations and requirements is available

**11. Are there any costs or benefits not detailed in the impact assessment which HSE needs to consider?**

Yes ☐

No ☒

**Please provide additional details.**

**12. The impact assessment details risks and uncertainties. Which of these are most likely to be realised? Please provide your views/comments.**

No comment

**13. Do you think there are any other risks or uncertainties HSE need to consider in the impact assessment?**

Yes ☐

No ☒

**Please provide your views/comments.**

**14. Are you satisfied with the conclusions of the Equality Impact Assessment related to this consultation document?**

Yes ☒

No ☐

**If no what conclusions are you concerned about?**

--

**15. Are there any additional factors which you believe should be taken into account in the impact assessment?**

Yes ☐

No ☒

**If yes what additional factors need to be taken into account?**

--

**16. Do you have any specific comments on cost recovery not covered by the questions above?**

Yes ☐

No ☒

## Local Authority section

Please only answer the questions in this section if you are responding on behalf of a local authority.

Are you responding on behalf of a local authority?

Yes ☒

No ☐

17. Would your Local Authority wish to have a legal duty (non-discretionary) to operate a fee for intervention cost recovery scheme?

Yes ☒

No ☐

Please explain the reason for your answer.

Shetland Islands Council would welcome the opportunity to implement cost recovery. It will not burden compliant businesses but those who fail to comply with health and safety law will be subject to a fee, this will promote greater awareness of health and safety in businesses who currently don't comply. This will reduce the costs of injury and ill health to individuals and society as a whole.



**18. Assuming your Local Authority is required to implement cost recovery, are the HSE estimates in the impact assessment an accurate representation of what would happen in your Local Authority with reference to:**

**a) the proportion of visits that would result in finding a material breach?**

Inspections of most businesses, such as shops, hairdressers, community halls result in a material breach being identified.

**b) the estimated cost recovery rate?**

Based on the costs per intervention mentioned in the consultation it is possible that the recovery rate would be lower as a result of unpaid invoices. The figures quoted for an intervention would be quite significant for a number of the businesses in the Local Authority Area.

As a small Local Authority, the set up and running costs are likely to be relatively high in relation to any income collected.

**c) if the estimates are not correct, what estimates do you feel HSE should use in these areas when estimating LA costs?**

**19. What do you expect to be the costs of establishing a cost recovery scheme? Please give separate estimates for:**

**a) training of inspectors**

Costs cannot be determined until detail of expectations and requirements for training are established, travel cost off islands subsistence and accommodation
<b>b) internal communication efforts</b>
Costs cannot be determined until detail of expectations and requirements
<b>c) process and system testing</b>
Costs cannot be determined until detail of expectations and requirements
<b>d) changes in computer systems</b>
£2000- cost of visit for CIVICA system consultant to attend island to alter system
<b>e) setting up an invoicing system etc</b>
Costs cannot be determined until detail of expectations and requirements although it could build on existing systems
<b>f) annual running costs for a cost recovery system?</b>
Costs cannot be determined until detail of expectations and requirements

**20. Do you have systems in place that will allow your Local Authority to accurately record the time spent on regulatory interventions to allow invoice**

**generation?**

Yes but not currently used

**Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?**

It is officers experience that businesses do not wilfully ignore the law, breaches tend to be the result of ignorance or misunderstanding. The approach taken locally has been to advise, support and guide businesses to compliance and only take formal enforcement action when the risk is great or the educative approach has failed.

If there are to be charges raised in relation to non compliance then a fixed penalty scheme would be fairer, this could be used where a business has already been advised of their non-compliance and then fails to comply.

**Is there anything you particularly liked or disliked about this consultation?**

**Please send your response by 14 October 2011 to:**

Cost Recovery Consultation  
Health and Safety Executive  
6.4 Redgrave Court  
Merton Road  
Bootle  
Merseyside L20 7HS

Tel: 0151 951 5955  
Fax: 0151 951 3363

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**E-mail:** [costrecoveryconsultation@hse.gsi.gov.uk](mailto:costrecoveryconsultation@hse.gsi.gov.uk)

**Thank you for taking the time to complete this questionnaire**

**Environment and Transport Committee****5 October 2011****CONSULTATION ON EXTENDING LOCAL BUS REGISTRATION AND BUS SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE TRANSPORT (DRT)**

TR-24-11-F

**Executive Manager Transport Planning****Development Services/Transport Planning****1.0 Summary**

- 1.1 The purpose of this report is to provide the Committee with a proposed response to the Scottish Government Consultation on Extending Local Bus Registration and Bus Service Operators Grant to Demand Responsive Transport.

**2.0 Decision Required**

- 2.1 The Committee is asked to consider and, subject to any amendments which Members may consider appropriate, approve the proposed response to the Scottish Government (attached as Appendix 2).

**3.0 Detail**

- 3.1 The Scottish Government has consulted with local authorities and other transport operators and stakeholders on a proposed amendment to current public passenger transport legislation.
- 3.2 The Transport (Scotland) Act 2001 empowered Scottish Ministers to make grants to bus operators. The Bus Service Operators Grant (Scotland) Regulations 2002 (BSOG) set the conditions under which grants are payable.
- 3.3 Grants, through the form of rebate are awarded to claimants at the equivalent rate of fuel duty, currently £0.41 per litre. BSOG is payable for scheduled bus services and community transport but not for demand responsive transport (DRT).
- 3.4 The amendment proposed by the Scottish Government would introduce BSOG for DRT services. Should this be approved by

Scottish Ministers, it is anticipated that revised legislation in the form of a Statutory Instrument would be in place in spring 2012.

## **4.0 Implications**

### Strategic

#### **4.1 Delivery On Corporate Priorities**

None

#### **4.2 Community /Stakeholder Issues**

The community transport fleet of blue buses and the Westside Mainline route where SIC is the operator are already in receipt of BSOG. Should Ministers approve BSOG for DRT, contracted transport operators would be able to claim. Services would need to be registered with the Traffic Commissioners.

#### **4.3 Policy And/Or Delegated Authority**

In accordance with Section 2.3.1 of the Council's Scheme of Administration and Delegation, the Environment & Transport Committee has delegated authority to make decisions on the matters within approved policy and for which there is a budget.

#### **4.4 Risk Management**

None

#### **4.5 Equalities, Health And Human Rights**

The proposed modification is more equitable as it removes a cost associated only with DRT and not to scheduled services or community transport. As DRT operations are predominantly in rural and remote areas the proposal contributes positively to social inclusion.

#### **4.6 Environmental**

None

### Resources

#### **4.7 Financial**

There are no immediate financial benefits for the council. The in-house operated scheduled and community transport services are currently in receipt of BSOG.

The transport operators who provide DRT would be able to claim BSOG reducing their operating costs and could potentially offer slightly lower tender prices in future.

4.8 Legal

None

4.9 Human Resources

Any staff time required by the change in legislation would be accommodated by current staffing levels

4.10 Assets And Property

None

**5.0 Conclusions**

- 5.1 The proposal to introduce BSOG for DRT is welcomed. It would improve the fairness of current Scottish Passenger Transport Legislation and reduce transport costs for operators, in particular for rural and remote communities. Subject to Committee approval, the attached proposed response to the consultation answers the set questions and provides council support for the proposal.

For further information please contact:

*Michael Craigie, Executive Manager Transport Planning*

*01595 744160, [Michael.craigie@shetland.gov.uk](mailto:Michael.craigie@shetland.gov.uk)*

*23 September 2011*

Appendices

Appendix 1: Consultation document

Appendix 2: Respondant Information Form

END





# **Consultation on Extending Local Bus Registration and Bus Service Operators Grant (BSOG) to Demand Responsive Transport (DRT)**

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St Andrew's House  
Edinburgh  
EH1 3DG

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Our ref:

Date:  
1 July 2011

Dear Sir/Madam,

1. I am writing to invite you to comment on the attached draft legislation in respect of extending Local Bus Registration and Bus Service Operators Grant (BSOG) to Demand Responsive Transport (DRT).
2. Your comments with regard to the draft legislation should be submitted by 30 September 2011.

## Background

3. In accordance with s.6 of the Transport Act 1985 ("1985 Act"), local bus services are currently required to be registered with the Traffic Commissioner who oversees the regulatory regime to ensure that the service delivered matches the registration details. S.2 of the 1985 Act provides the definition of a local service, part of this definition is that they are available to the general public.
4. It is proposed to extend the definition of a local bus service to include DRT services. Therefore to be included as a local service means that the DRT services would need to be available to the general public. The benefit of this change is that once registered these DRT services would fall within the regulatory regime operated by the Traffic Commissioner and would be monitored to ensure that services are delivered as per the registration. In making this change, these DRT services will also qualify for the Scotland-wide Concessionary Travel Scheme thereby improving accessibility and social inclusion for eligible passengers in remote areas and ensuring that all passengers receive a regular and reliable transport service.
5. This consultation invites comments on the proposed draft legislation, and views or suggestions about any other items that might be included in the final version. A list of questions on which we would welcome views has been provided in the response pro-forma at Annex E.
6. The following Annexes accompany this letter:-

- ◆ Annex A contains an overview of the Scottish government's consultation process;



- ◆ Annex B contains information on how you should respond to the consultation, handling your response and next steps in the process;
- ◆ Annex C contains the Respondent Information Form which must accompany responses to the consultation
- ◆ Annex D contains the draft legislation;
- ◆ Annex E contains a pro-forma for responding to this consultation;
- ◆ Annex F contains a list of consultees;
- ◆ Annex G contains the Business and Regulatory Impact Assessment.

## Responses

7. Should you wish to respond to this consultation, please reply, using the pro-forma provided at Annex E and submit along with completed Respondent Information Form (Annex C), by e-mail to [drt\\_consultation2011@scotland.gsi.gov.uk](mailto:drt_consultation2011@scotland.gsi.gov.uk) or by post to myself at the above address. Similarly if you have any queries about the consultation, or any suggestions as to other bodies, or individuals who you feel may wish to participate in this consultation, please contact me as above, or by telephone on 0131 244 7760.

Yours sincerely

DEREK O'NEILL

## THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses<sup>13</sup>. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may: indicate the need for policy development or review; inform the development of a particular policy; help decisions to be made between alternative policy proposals, or be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

## INFORMATION ON YOUR INVITATION TO RESPOND

### CONSULTATION ON EXTENDING LOCAL BUS REGISTRATION AND BUS SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE TRANSPORT (DRT)

Responding to this consultation paper:-

We are inviting written responses to this consultation paper by 30 September 2011. Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

[drt\\_consultation2011@scotland.gsi.gov.uk](mailto:drt_consultation2011@scotland.gsi.gov.uk)

or by mail to:- Bus & Taxi Policy Branch, Transport Scotland, Area 2D (N), Victoria Quay, Edinburgh, EH6 6QQ

If you have any queries contact Derek O'Neill on 0131 244 7760.

We would be grateful if you would use the consultation questionnaire provided. However, if this is not suitable/practicable, it would be appreciated if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new

consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form (ANNEX C) accompanying this letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library.(see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 28 October 2011. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### What happens next?

Following the closing date, all responses will be analysed and considered in order to inform our consideration as to the content of the final legislation. We aim to issue a report

on this consultation process by end of December 2011 and introduce amended legislation in spring 2012.

#### Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Derek O'Neill as per contact details above.



## Annex C

# Consultation on Extending Local Bus Registration and Bus Service Operators Grant (BSOG) to Demand Responsive Transport (DRT)

## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Forename

### 2. Postal Address

Postcode	Phone	Email

### 3. Permissions - I am responding as...

Individual

☐

/

Group/Organisation

☐

*Please tick as appropriate*

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate* ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate* ☐ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

7

☐ Yes

☐ No

# EXTENDING LOCAL BUS REGISTRATION AND BUS SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE TRANSPORT (DRT)

## DRAFT LEGISLATION - 1

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### SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

## **TRANSPORT**

### The Bus Service Operators Grant (Scotland) Amendment Regulations 2011

*Made* - - - - 2011

*Laid before the Scottish Parliament* 2011

*Coming into force* - - 2011

The Scottish Ministers, make the following Regulations, in exercise of the powers conferred by sections 38(5) and 81(2) of the Transport (Scotland) Act 2001<sup>(1)</sup> and of all other powers enabling them to do so.

#### **Citation and commencement**

1. These Regulations may be cited as the Bus Service Operators Grant (Scotland) Amendment Regulations 2011 and come into force on [ ] 2011.

#### **Amendment of the Bus Service Operators Grant (Scotland) Regulations 2002**

2.—(1) The Bus Service Operators Grant (Scotland) Regulations 2002<sup>(2)</sup> (“the principal Regulations”) are amended as follows.

(2) In regulation 2 (Interpretation), after the definition of “disabled person”, insert—

““fixed stopping place” and “flexible service” have the meanings respectively given in the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001<sup>(3)</sup>”.

(3) In regulation 3 (eligibility for grant) is amended as follows—

(a) in paragraph (1)(b), omit the words from “which is provided” to “a timetable) and”.

(b) for paragraph (2)(b) substitute—

“(b) the stopping arrangements are such that—

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<sup>(1)</sup> 2001 asp 2.

<sup>(2)</sup> S.S.I. 2002/289.

<sup>(3)</sup> [S.S.I. 2001/219. The relevant amendments are by S.S.I. 2011 [ ]].

- (i) all the fixed stopping places (whether marked or otherwise generally recognised) other than at the service termini are located where they are likely to be used with reasonable frequency by members of the general public, and
  - (ii) in any section of the area of operation of the service where there are no fixed stopping places, the arrangements for determining when and where passengers may be taken up and set down are such that members of the general public may take advantage of them with reasonable frequency;”.
- (4) For paragraph (2)(c) substitute—
- “(c) members of the general public are able to make a single journey between two stopping places (to the extent that such journeys are provided for in the registered particulars having regard to boarding and alighting restrictions) upon payment of a fare that is not a deliberate deterrent to their use of the service;
- (ca) in the case of a flexible service, the advance booking arrangements are such that they do not act as a deterrent to members of the general public wishing to make a single journey which is otherwise provided for in the particulars of registration;”.
- (5) In paragraph (2)(d), for “such members” substitute “members of the general public”.
- (6) For paragraph (3)(b) substitute—
- “(b) the stopping arrangements are such that—
- (i) all the fixed stopping places (whether marked or otherwise generally recognised) are located where they are likely to be used with reasonable frequency by members of the general public, and
  - (ii) in any section of the area of operation of the service where there are no fixed stopping places, the arrangements for determining when and where passengers may be taken up and set down are such that members of the general public may take advantage of them with reasonable frequency;”.
- (7) For paragraph (3)(c) substitute—
- “(c) members of the general public are able to make a single journey between two stopping places (to the extent that such journeys are provided for in the registered particulars having regard to boarding and alighting restrictions) upon payment of a fare that is not a deliberate deterrent to their use of the service;
- (ca) in the case of a flexible service, the advance booking arrangements are such that they do not act as a deterrent to members of the general public wishing to make a single journey which is otherwise provided for in the particulars of registration;”.
- (8) In paragraph (3)(d), for “such members” substitute “members of the general public”.

A member of the Scottish Executive

St Andrew’s House,  
Edinburgh

2011

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations amend the Bus Service Operators Grant (Scotland) Regulations 2002 by:—

- (a) making provision for grant to be paid to operators of flexible bus services, particulars of which may be registered under the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001 as amended by the Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2011, by taking account of the different stopping arrangements applying in the case of such services; and
- (b) removing the provision under which sections of bus route which have boarding and alighting restrictions are ineligible to grant on the grounds that passengers are unable to travel between certain pairs of stopping places.

A Business and Regulatory Impact Assessment covering these Regulations and the contemporaneous Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2011 has been prepared and copies may be obtained from Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

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## DRAFT LEGISLATION - 2

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### SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

## **PUBLIC PASSENGER TRANSPORT**

### **The Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2011**

<i>Made</i>	- - - -	<i>2011</i>
<i>Laid before the Scottish Parliament</i>		<i>2011</i>
<i>Coming into force</i>	- -	<i>2011</i>

The Scottish Ministers, make the following Regulations in exercise of the powers conferred by sections 6(2)(a), (3)(a), (8)(a), (9), and 8(6) of the Transport Act 1985<sup>(4)</sup> and by section 60(1)(e) and (f), (1A) and (2) of the Public Passenger Vehicles Act 1981<sup>(5)</sup> and all other powers enabling them to do so.

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<sup>(4)</sup> 1985 c.67; section 6 was amended by the Transport (Scotland) Act 2001 (asp 2), section 46. Section 134 and 135 of the Transport Act 1985 provide that sections 60 and 61 of the Public Passenger Vehicles Act 1981 shall have effect as if Parts I and II of the Transport Act 1985 were contained in that Act. See section 60(2) of the 1981 Act for definitions of “prescribed” and “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

<sup>(5)</sup> 1981 c.14. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

In accordance with section 61(2) of the Public Passenger Vehicles Act 1981<sup>(6)</sup> they have consulted with such representative organisations as they think fit.

### **Citation and commencement**

3. These Regulations may be cited as the Public Service Vehicles (Registration of Local Services) Regulations 2011 and come into force on [ ] 2011.

### **Amendment of the principal Regulations**

4. The Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001<sup>(7)</sup> are amended in accordance with regulations 3 to 8.

### **Amendment of interpretation provisions**

5.—(1) In regulation 2 (interpretation)—

(2) In paragraph (1) after the definition of “destination”, insert—

““fixed stopping place” means a stopping place at a fixed location;”.

(3) In the Table in paragraph (2), omit item 2.

(4) After paragraph (2), insert—

“(2A) In these Regulations—

(a) a reference to a flexible service is a reference to a service—

- (i) which serves one or more local communities or neighbourhoods within a specific geographical area,
- (ii) which, while it may have fixed sections of route, is in the entirety of its operation so flexible that it is not practicable to identify in advance all the roads to be traversed at any given time,
- (iii) which is provided primarily for the purpose of carrying passengers who have booked in advance of the journey and whose collective requirements determine the route of each journey notwithstanding that other persons may also be travelling,
- (iv) all the seats of which are available for use by members of the general public, and
- (v) which is provided in consideration of the payment of individual passenger fares which are not subject to variation according to the number of passengers carried on the journey;

(b) a reference to a standard service is a reference to any other service.”.

6.—(1) For regulation 5 (prescribed particulars) substitute—

“5. The following particulars are prescribed for the purposes of section 6(2)(a) of the 1985 Act—

- (a) in the case of every service, the particulars specified in Part 1 of Schedule 1;
- (b) in the case of a standard service, the further particulars specified in Part 2 of Schedule 1;
- (c) in the case of a flexible service, the further particulars specified in Part 3 of Schedule 1.”.

(2) For Schedule 1 (particulars of the service) there is substituted Schedule 1 as contained in the Schedule to these Regulations.

7. In regulation 7(2)(b) (alteration of notice periods at a traffic commissioner’s discretion) for “service” substitute “standard service”.

8. In regulation 8 (exclusions from notice requirements) for paragraph (2) substitute—

“(2) The cases referred to in paragraph (1) are cases—

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<sup>(6)</sup> Section 61(2) was amended by section 135(1) of the Transport Act 1985.

<sup>(7)</sup> S.S.I. 2001/219. The relevant amendments are by S.S.I. 2001/251 and 2005/346.

- (a) where the registration is varied only to enable the operator of the service to comply with a traffic regulation condition or any other provision made by or under an enactment prohibiting or restricting the use of any road by vehicular traffic;
- (b) where the registration is varied only in respect of a change in the operator's address;
- (c) where the service is a bus substitution service.

(3) In this regulation "bus substitution service" has the same meaning given by section 83(1) of the Railways Act 1993<sup>(8)</sup>."

**9. For regulation 13(3) (applications on which no fee is payable) substitute—**

"(3) No fee shall be payable—

- (a) on an application to vary a service the only reason for which is to enable the operator of the service to comply with a traffic regulation condition or any other provision made by or under enactment prohibiting or restricting the use of any road by vehicular traffic;
- (b) on an application to record a change in the operator's address."

**10. For regulation 14 (Amendment of fare tables, timetables and destination and route number notices) substitute—**

**"Display of service information in and on vehicles**

**14.—**(1) This regulation applies to every vehicle except a vehicle being used—

- (a) under a special licence, or
- (b) to provide an excursion or tour.

(2) While a vehicle is being used to provide a standard service, the operator shall either display inside the vehicle in a manner clearly legible to passengers or have available on the vehicle for passengers who request them—

- (a) a fare table containing sufficient information to enable a passenger to ascertain without difficulty the fare for his journey, and
- (b) a timetable containing at least the information specified in paragraph 5 of Part 1 and paragraph 3(b) of Part 2 of Schedule 1.

(3) While a vehicle is being used to provide a flexible service, the operator shall display inside the vehicle information about fares (whether in the form of a fare table or otherwise) which is both clearly legible to passengers and is formulated in such a manner that a passenger may ascertain the fare for his journey without difficulty.

(4) While a vehicle is being used to provide a standard service, the operator shall display in a position clearly legible from the outside of the vehicle—

- (a) a notice indicating the destination or, as the case may be, the route of the service, and
- (b) either the service number or the name by which it is known.

(5) While a vehicle is being used to provide a flexible service, the operator shall display in a position clearly legible from the outside of the vehicle the name by which the service is known.

**Information about flexible services**

**15.** The operator of a flexible service shall make available, in any reasonably accessible form, to all persons who may wish to use the service—

- (a) details of the nature of the service, including at least—
  - (i) a description of the area of its operation, and
  - (ii) a statement setting out the features mentioned in regulation 2(2A)(a)(iii) and (iv),

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<sup>(8)</sup> 1993 c.43. Section 83 was amended by the Railways Act 2005, c.14 Sch. 11 para 13(b).

- (b) information about fares formulated in such a manner (whether as a table of fares or otherwise) that a person may ascertain the fare for his journey without difficulty, and
- (c) the information specified in paragraphs 4, 5 and 6 of Part 3 of Schedule 1.

### **Records of operation of flexible services**

**16.**—(1) Where so required by the traffic commissioner (whether at the time of registration of the service or later) the operator of a flexible service shall record and maintain, in any reasonably accessible form, the following information (“the specified information”) in respect of every journey made by a vehicle operating the service—

- (a) the date the journey was made,
- (b) the names of all passengers who were booked to travel (whether or not they actually travelled) and details of how each such passenger may be contacted,
- (c) the time when and place where it was agreed or otherwise determined that each passenger who travelled should be taken up and set down, and
- (d) the actual time and place at which each passenger was taken up and set down.

(2) The operator shall keep the specified information for a period of one year after the relevant journey was made or for such longer period as the traffic commissioner may specify for the purpose of enabling him to perform his functions under any enactment.

(3) When reasonably required to do so by the traffic commissioner (or by one of his officers or servants) in connection with the performance of such functions the operator shall produce, or make available for inspection, any part of the specified information.

(4) An operator may, instead of recording and maintaining the specified information himself, cause it to be recorded and maintained by another person on his behalf and in such a case that other person shall be under the duties imposed on the operator by paragraphs (2) and (3) above.”.

### **Transitional provisions**

**11.**—(1) This regulation applies in relation to a service (the “current service”) which, immediately before the date on which these Regulations come into force, is registered under section 6 of the Transport Act 1985<sup>(9)</sup> in accordance with the provisions of the principal Regulations in force at that time.

(2) Where this regulation applies, until the date specified in paragraph (3)—

- (a) the principal Regulations shall have effect as amended by these Regulations, but as if the provisions hereof specified in paragraph (5) were omitted, and
- (b) the current service may be operated, or continue to be operated, in accordance with the principal Regulations as so amended.

(3) The date referred to is the date on which the first variation of the registration after the coming into force of these Regulations becomes effective under section 6(8) of the Transport Act 1985.

(4) For the purposes of paragraph (3), a variation made in any of the circumstances described in regulations 7(2) and 8(2)(c) of the principal Regulations (as they have effect in relation to a current service) shall be ignored.

(5) The provisions referred to in paragraph (2)(a) are—

- (a) regulation 3(4),
- (b) regulations 4, 5, 8 and 9 (and the reference to them in regulation 2(1)) and the Schedule, and
- (c) in regulation 6, the substituted regulation 8(2)(b);
- (d) in regulation 7, the substituted regulation 13(3)(b).

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<sup>(9)</sup> 1985 c.67.

St Andrew's House,  
Edinburgh  
2011

A member of the Scottish Executive



## SCHEDULE

Regulation 4(2)

### SUBSTITUTED SCHEDULE TO THE PRINCIPAL REGULATIONS

## “SCHEDULE 1

Regulation 5

### PART 1

#### *Particulars applicable to all services*

1. The name and address of the operator of the service.
2. The number of his public service vehicle operator's licence or community bus permit (save where, by virtue of any enactment, he is not required to hold such a licence or permit).
3. The date on which the service is to start.
4. The service number or, if it has no number, the name by which it is to be known.
5. The times during the year when the service will be provided.

### PART 2

#### *Further particulars applicable to standard services only*

1. The principal starting and finishing points of the service.
2. A statement of whether the service consists of excursions or tours.
3. If the service does not consist of excursions or tours—
  - (a) a description of the route, including details of alternative sections of route where it may be modified for the purpose of particular journeys, which is sufficient to identify the roads to be traversed, together with a map of a scale not smaller than 1:50,000 showing those roads,
  - (b) a timetable for the service indicating the proposed times (on the days when the service is to run) of individual services at principal points on the route, save where the service interval is 10 minutes or less when a statement of that fact may be given, and
  - (c) an indication of the stopping places where the vehicles used on the service will stand for longer than the time required to pick up or set down passengers.
4. If the service does consist of excursions or tours—
  - (a) an outline of the route indicating the points, other than the starting point, where passengers will be taken up, and
  - (b) the maximum number of vehicle departures to be made on any one day.
5. Details of stopping arrangements, including (in appropriate cases)—
  - (a) details of whether all the marked or generally recognised stopping places on the route will be used habitually and, if not, what the stopping arrangements at those places will be, and
  - (b) details of any sections of the route where passengers will be taken up and set down upon signalling their wishes to the driver of the vehicle.

6. A description of any reversing and other manoeuvres which will result in a vehicle returning along part of its route.

## PART 3

### *Further particulars applicable to flexible services*

1. A description of the area of operation of the service, accompanied by a map of a scale not smaller than 1:50,000 showing the sections of flexible operation and fixed sections of route (if any).

2. Details of any fixed stopping places and the stopping arrangements at those places (including whether all the specified fixed stopping places will be in use at all operating times and, if not, what the stopping arrangements will be at those places).

3. An indication of any fixed stopping places where the vehicles used on the service may or will stand for longer than the time required to pick up or set down passengers.

4. The terms on which, and the methods by which, journeys may be booked, including—

- (a) the times when a booking for a particular journey may be made,
- (b) the means of identifying where a passenger may be taken up or set down otherwise than at fixed stopping places, and
- (c) whether the travel demands of every prospective passenger will be met and, if not, what arrangements (if any) will be made where a person's demands cannot be met.

5. Subject to paragraph 7, the timing of the service, including—

- (a) in the case of a service having fixed stopping places on its route, a timetable indicating the proposed times (on the days when the service is to run) of individual services at those stopping places, and
- (b) in every case, the means of determining the time at which a passenger may be taken up or set down in the sections of flexible operation.

6. Where it is impracticable to specify an exact time of arrival at, or departure from, a fixed stopping place or other point within the area of operation, a time window (that is to say a period of time during which a vehicle is intended to arrive/depart) may be specified instead, the time window to be of an appropriate length but not longer than 20 minutes unless the traffic commissioner is satisfied in an exceptional case that it is reasonable for a longer period to be allowed.”

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001 by—

- (a) prescribing new particulars which must be registered before a local service may be provided and specifying two classes of service, standard and flexible, for that purpose (*regulations 3, 4 and the Schedule*);
- (b) making minor amendments to the provisions about notice periods and minor service variations (*regulation 5, and 6*);
- (c) making new provision for the display of service information in and on vehicles and the publication of information about flexible services (*regulation 8*);
- (d) imposing requirements as to the records which must be kept about the operation of flexible services (*regulation 9*); and
- (e) making minor and consequential amendments.

The Regulations also contain transitional provisions to preserve the validity of an existing registration until such time as an application made to vary the registration takes effect. There are some exceptions to that rule (*regulation 10*).

A Business and Regulatory Impact Assessment covering these Regulations and the contemporaneous Bus Service Operators Grant (Scotland) Amendment Regulations 2011 has been prepared and copies may be obtained from Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

**EXTENDING LOCAL BUS REGISTRATION AND BUS SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE TRANSPORT (DRT) - CONSULTATION ON DRAFT LEGISLATION**

Pro-forma for use when responding on draft guidance:-

<b><i>Name of respondent</i></b>	
<b><i>Organisation (if applicable)</i></b>	
<b><i>Interest (eg trade; local authority; passenger interest)</i></b>	
Q1. Do you agree with the definition of a flexible service as described in the draft legislation, or do we need to add further details?	
Q2. Do you agree that DRT services be allowed to be registered as a local bus?	
Q3. Do you agree with the proposed conditions for registering DRT services?	
Q4. Should DRT services receive BSOG payments?	
Q5. Do you agree with the proposed conditions for DRT services to receive BSOG payments?	
Q6. Do you think the passenger will benefit from these proposed changes?	
Q7. Is there any general comments about these proposals you would wish to make?	

**CONSULTATION ON EXTENDING LOCAL BUS REGISTRATION AND BUS  
SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE  
TRANSPORT (DRT)**

**LIST OF CONSULTEES**

All Scottish MEPS  
SPICe Library  
Scottish Government Library  
Clerk to Local Government and Transport Committee

Chief Executives of Scottish Local Authorities  
COSLA

Age Concern Scotland  
ATCO  
Bus Operators in Scotland  
Community Transport Association (CTA)  
Communities Scotland  
Confederation of Passenger Transport (CPT)  
Consumer Focus Scotland  
Disabled Persons Transport Advisory Committee  
Equality and Human Rights Commission  
Help the Aged  
Mobility and Access Committee for Scotland (MACS)  
National Taxi Association  
Passenger View Scotland (PVS)  
Regional Transport Partnerships  
RNIB Scotland  
RNID Scotland  
Scottish Accessible Transport Alliance  
Scottish Council for Voluntary Organisations (SCVO)  
Scottish Pensioners Forum  
Scottish Taxi Federation  
Scottish Traffic Commissioner

## Partial Business and Regulatory Impact Assessment

<p><b>Title of Proposal</b></p> <p><b>Extending Local Bus Registration and Bus Service Operators Grant (BSOG) to Demand Responsive Transport (DRT)</b></p>
<p><b>Purpose and intended effect</b></p> <ul style="list-style-type: none"> <li> <p>• <b>Background</b></p> <p>In accordance with s.6 of the Transport Act 1985 (“1985 Act”), local bus services are currently required to be registered with the Traffic Commissioner who oversees the regulatory regime to ensure that the service delivered matches the registration details. S.2 of the 1985 Act provides the definition of a local service, part of this definition is that they are available to the general public.</p> </li> <li> <p>• <b>Objective</b></p> <p>It is proposed to extend the definition of a local bus service to include DRT services. Therefore to be included as a local service means that the DRT services would need to be available to the general public. The benefit of this change is that once registered these DRT services would fall within the regulatory regime operated by the Traffic Commissioner and would be monitored to ensure that services are delivered as per the registration. In making this change, these DRT services will also qualify for the Scotland-wide Concessionary Travel Scheme thereby improving accessibility and social inclusion for eligible passengers in remote areas and ensuring that all passengers receive a regular and reliable transport service.</p> </li> <li> <p>• <b>Rationale for Government intervention</b></p> <p>The Scottish Government is committed to working with key stakeholders to improve bus services in Scotland. The key policy drivers are to link communities, people, places of business and employment and essential services through encouraging the maintenance and development of the bus network in Scotland and to support modal shift from cars to public transport where possible. The proposed changes will encourage more bus operators to provide DRT services in rural and urban areas of Scotland which will contribute to achieving the Government purpose of sustainable economic growth.</p> </li> </ul>
<p><b>Consultation</b></p> <ul style="list-style-type: none"> <li> <p>• <b>Within Government</b></p> <p>The SG has already discussed these proposals with the Traffic Commissioner (TC). The TC is keen to have such DRT services registered within the regulatory regime in order to enable her office to</p> </li> </ul>

monitor and ensure that services are delivered by operators do meet the service standards registered with the Commissioner.

Brian Juffs, formerly Senior Bus Development Adviser (SBDA) has also informed us that the DRT Forum confirmed that there were a number of DRT services already operating throughout the country, providing valuable and reliable services. These small operators and their passengers could benefit from being included in the regulatory regime.

- **Public Consultation**

A 3 month public consultation will take place from 1 July 2011 until 30 September 2011.

Informal consultation has taken place with Brian Juffs, SBDA who lead the DRT Forum on 16 March 2010 entitled: - A More Cohesive Approach to the Provision of Community Transport/Demand Responsive Transport Services Across Scotland.

- **Business**

Following ongoing discussions with the Traffic Commissioner, and in tandem with feedback received from those organisations involved with the Scottish Government DRT Forum chaired by the Senior Bus Development Advisor (ATCO, COSLA, RTPs, Community Transport Association, Confederation of Passenger Transport, Strathclyde Partnership for Transport and PVS), it became evident that there was significant support for the outline proposal both to extend local bus registration and payments under the Bus Service Operators Grant (BSOG) to demand responsive transport; but that some form of public consultation would be required to identify any potential issues that might arise if that was then to be progressed through secondary legislation.

There are no businesses affected by these proposals so there has been no direct, face-to-face consultation with business. We have however consulted directly with all those organisations who will be affected and they have contributed to the development of these proposals.

## **Options**

**Option 1.** To enable DRT services available to the general public to be registered as local services, thereby qualifying for the Scotland-wide concessionary travel scheme. Also extending the Bus Service Operators Grant to such DRT services.

**Option 2.** Do nothing.

- **Sectors and groups affected**

The recommended changes will enable DRT services which are available to the general public to be registered with the Traffic Commissioner as local bus services, thereby qualifying for concessionary travel funding. It is proposed that entitlement to BSOG funding be extended to those DRT services which are registered as local services and therefore available to the general public.

Those groups affected will include:-

Confederation of Passenger Transport (CPT),  
Community Transport Association (CTA),  
Regional Transport Partnerships (RTPs) mainly Strathclyde Partnership for Transport (SPT), and  
Local Authorities

- **Benefits**

**Option 1.** The measures proposed are designed to encourage the development of more DRT services helping to further improve access to services, facilities and social networks and so promote social inclusion. This is particularly relevant where fixed route bus services are not commercially viable.

**Option 2.** That there will be no additional strain on either the BSOG or Scotland-wide concessionary travel scheme budgets.

- **Costs**

**Option 1.** There will be no additional increase to either the BSOG or Scotland-wide concessionary travel scheme budgets for 2011/12. Though these proposed amendments will result in an additional strain on each budget. The current BSOG scheme is budget limited and the Scotland-wide concessionary travel scheme budget is capped.

**Option 2.** The BSOG budget for 2011/12 is limited £60.3m and the Scotland-wide concessionary travel scheme budget for 2011/12 is capped at £180m.

### **Scottish Firms Impact Test**

There are no businesses affected by these proposals so there has been no direct, face-to-face consultation with business. We have however consulted directly with all those organisations who will be affected and these organisations have contributed to the development of our proposals.

- **Competition Assessment**

We have fully considered the questions posed in the Office of Fair Trading (OFT) competition assessment test and conclude that our preferred policy option is unlikely to hinder the number or range of businesses or the ability for operators to compete.



<ul style="list-style-type: none"> <li>• <b>Test run of business forms</b> There are no new forms being brought into force as a result of our proposals there no requirement to carry out a test run of business forms.</li> </ul>
<p><b>Legal Aid Impact Test</b> Having considered the information provided in the BRIA, the Legal Aid Team has confirmed that the impact on the Fund will be minimal.</p>
<p><b>Enforcement, sanctions and monitoring</b></p> <p>The Office of the Traffic Commissioner (OTC) will enforce and monitor. The OTC ensures all applications for registered bus services are scrutinised upon receipt and additional information requested accordingly. In addition, the OTC acts on (public) complaints and/or performance reports submitted by VOSA Inspection Officers on Bus Operators and holds Public Inquiries into cases of non-compliance or poor performance which can result in a range of penalties such as fines, licences suspended or revoked.</p>
<p><b>Implementation and delivery plan</b></p> <p>All of the systems that apply to Option 1 are already in operation. Therefore, after the 3 month consultation period, and should there be no serious objections, the draft legislation including any amendments, will be laid in the Scottish Parliament later in 2011. Thereafter, sometime in March/April 2012, it will be published on the SG Website and all stakeholders will be e-mailed to confirm the new legislation is now in effect.</p> <ul style="list-style-type: none"> <li>• <b>Post-implementation review</b>  A review will take place 6mths-9mths after the legislation goes 'live' through monitoring the impact on both the BSOG and Scotland-wide concessionary travel schemes budgets and in liaising with the OTC regarding the numbers of new DRT services operating in Scotland.</li> </ul>
<p><b>Summary and recommendation</b></p> <p>Option 1 is being recommended because the measures proposed are designed to encourage the development of more DRT services helping to further improve access to services, facilities and social networks and so promote social inclusion. This is particularly relevant where fixed route bus services are not commercially viable. There will be no additional increase to either the BSOG or Scotland-wide concessionary travel scheme budgets in 2011/12.</p> <ul style="list-style-type: none"> <li>• <b>Summary costs and benefits table</b>  Both Options 1 &amp; 2 will operate within the same budgets as outlined below. However, Option 1 is designed to encourage the development of more DRT services helping to further improve access to services, facilities and</li> </ul>

social networks and so promote social inclusion.

Budgets 2011/12	£million
BSOG	60.3
Scotland-wide Concessionary Travel scheme	180
<b>Total</b>	<b>240.3</b>

### **Declaration and publication**

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



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## ANNEX C

### CONSULTATION ON EXTENDING LOCAL BUS REGISTRATION AND BUS SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE TRANSPORT (DRT)

#### RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

##### 1. Name/Organisation

Organisation Name

Shetland Islands Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Craigie

Forename

Michael

##### 2. Postal Address

Transport Office

Shetlands Islands Council

20 Commercial Street

Lerwick

Postcode

ZE1 0LX

Phone 01595 744160

Email

Michael.craigie@shetland.gov.uk

##### 3. Permissions - I am responding as...

Individual

☐

/ Group/Organisation

*Please tick as appropriate*

☒

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate* ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis  
*Please tick ONE of the following boxes*

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate* ☒ Yes ☐ No

**(d)**

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

☒

Yes

☐

No

# **EXTENDING LOCAL BUS REGISTRATION AND BUS SERVICE OPERATORS GRANT (BSOG) TO DEMAND RESPONSIVE TRANSPORT (DRT) - CONSULTATION ON DRAFT LEGISLATION**

Pro-forma for use when responding on draft guidance:-

<b>Name of respondent</b>	Michael Craigie
<b>Organisation (if applicable)</b>	Shetland Islands Council
<b>Interest (eg trade; local authority; passenger interest)</b>	Local Authority
Q1. Do you agree with the definition of a flexible service as described in the draft legislation, or do we need to add further details?	Yes, we agree with the definition.
Q2. Do you agree that DRT services be allowed to be registered as a local bus?	Yes
Q3. Do you agree with the proposed conditions for registering DRT services?	Yes
Q4. Should DRT services receive BSOG payments?	Yes
Q5. Do you agree with the proposed conditions for DRT services to receive BSOG payments?	Yes
Q6. Do you think the passenger will benefit from these proposed changes?	Yes
Q7. Is there any general comments about these proposals you would wish to make?	This is a welcome amendment to public passenger transport legislation, one that will benefit passengers and operators. In particular passengers with mobility impairments and those who live in rural and remote areas.