



CABINET – 27TH JANUARY 2021

SUBJECT: BUS EMERGENCY SCHEME (BES) – REQUEST TO ALL COUNCILS TO SIGN UP TO BES 2 SCHEME

REPORT BY: INTERIM CORPORATE DIRECTOR – COMMUNITIES

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1. PURPOSE OF REPORT

- 1.1 This report sets out the wider context, the background to and reasons for the Bus Emergency Scheme (BES) and seeks the agreement of this authority to sign up to the BES 2 scheme.

2. SUMMARY

- 2.1 Bus travel has been severely affected by the Covid-19 pandemic, with passenger numbers plummeting, and the requirement for social distancing and additional cleansing requirements adding further burdens and costs on operators. Whilst Welsh Government and local authorities have stepped in to support the sector with substantial financial assistance, the current form of financial support is unsustainable. BES 2 provides a mechanism for managing the recovery and reshaping of bus services to respond to the impact of the COVID 19 pandemic.

3. RECOMMENDATIONS

- 3.1 Cabinet is recommended to:
- i. Agree to the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to formalise a relationship with Monmouthshire County Council, as signatory and lead Authority for South East Wales.
 - ii. Delegate authority to the Interim Corporate Director for Communities in consultation with the relevant cabinet member to negotiate and agree any further amendments to the agreement that may be required following Cabinet approval.
 - iii. Support a call through the lead authority for a further report on bus reform proposals from Welsh Government (WG) relating to the future management of bus services in Wales.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The need to seek the Council's agreement to the principles of the BES 2 scheme and to the establishment of a relationship with Monmouthshire County Council, as signatory and the lead Authority for South East Wales, that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf.

5. THE REPORT

5.1 Wider Context

- 5.1.1 Bus travel has been severely affected by the Covid-19 pandemic. Passenger numbers have plummeted, whilst social distancing and additional cleansing requirements have placed added burdens and costs on operators.
- 5.1.2 WG and local authorities (LAs) have stepped in to support the sector with substantial financial assistance. There has also been an excellent, ongoing dialogue between all parties to discuss and agree on support arrangements.
- 5.1.3 Prior to the pandemic, WG had consulted on a range of proposed changes to the way bus services are delivered in Wales. A Bus Bill was due to have been brought forward during the current Senedd term. Pressures associated with not only Covid but also the large volume of legal work generated by Brexit and the transition period forced WG to postpone the planned legislation.
- 5.1.4 Due to the large amount of public funding that goes into bus services from WG and LAs, WG would like to see the public sector having greater influence over areas such as the networks of services provided, ticketing and integration with rail services. It also sees a greater role for Transport for Wales (TfW), which is now responsible for rail services in Wales.
- 5.1.5 This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that these two can be linked. In the short term, the funding being provided to keep operators afloat is therefore being provided with a number of conditions attached. These are to incentivise operators to engage in planned changes that are in line with their longer-term ambitions for reform.
- 5.1.6 The Minister of Economy and Transport and North Wales, Ken Skates MS, has met with Leaders of all 22 LAs, along with his officials, to outline Welsh Government's direction of travel. Further details have been included in the Wales Transport Strategy (WTS) which has been the subject of consultation. More recently, the Deputy Minister, Lee Waters MS, met with all Leaders to discuss the WTS but also to encourage LAs to sign up to the Bus Emergency Scheme 2 (BES 2). This is the latest phase of financial support to help operators through the period of the pandemic (more details on BES 2 below).
- 5.1.7 Leaders have agreed to establish a WLGA Bus Member Group, with a focus on the longer-term proposals to reform the sector's operations. That group includes the WLGA Leader; Cllr Andrew Morgan (who is also the WLGA's Transport Spokesperson), the deputy Transport Spokesperson, the chairs of the four regional

transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group met with Lee Waters on 18th January 2021.

5.2 Background

- 5.2.1 The problems facing operators were recognised at an early stage of the pandemic. Looking ahead, to secure their services for the future, local authorities agreed to continue making payments for contracted services even though many services were initially suspended.
- 5.2.2 Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs being incurred. Initially, WG made £29m available from a Hardship Fund, which operated from April 2020 for three months. This Fund was assembled from monies that would otherwise have been paid via Bus Services Support Grant (BSSG), Mandatory Concessionary Fare reimbursement and the 'My Travel Pass' scheme.
- 5.2.3 The Bus Emergency Scheme was then introduced in July to provide ongoing support. This became known as 'BES 1' and it continued to maintain operators' income at historic levels, based on what was being paid to them under previous grant schemes. In return for this financial support Welsh Government signalled that it expected operators to contribute to a reshaping of bus services in Wales – to include improved regional networks with greater integration with rail services, smart ticketing and timetabling.
- 5.2.4 'BES 1.5' was introduced in August, administered by the lead Authorities, through whom BSSG had been paid since 2013¹. In the case of south east Wales, Monmouthshire County Council acts as the lead authority. BES 1.5 provided £10m of so-called 'ramp up funding' to support transport to enable the reopening of schools and economic activity. This funding helped to cover the cost of reinstating services suspended when travel restrictions associated with the pandemic were introduced, and which were needed to meet increasing demand, given capacity constraints of social distancing. BES 1.5 was then extended to the end of March 2021 following the announcement of a further support package in September 2020². Operators were once again asked to sign up to a range of terms and conditions to access the BES funding.
- 5.2.5 WG, working with TfW, are now proposing to enter into a longer-term BES 2 agreement with operators and local authorities to protect services. It will operate for an initial maximum term of up to 2 years from the date BES 1.5 commenced (i.e. up until 31

¹ The lead authority acts as a conduit for BSSG funding from WG to operators. Current lead authorities are Monmouthshire (for South East Wales); Flintshire (for North Wales); Swansea (for South West Wales), Ceredigion and Powys. Within each LA, transport staff play an important role liaising with operators on a range of issues to meet local Members' requirements. The roles include administration of Concessionary Fares reimbursement and provision of support for contracted journeys on non-profitable routes.

² Overall, an additional £45m has been provided by WG to support the bus sector this financial year including the £10m ramp up funding an extra £35m from September to the end of the year.

July 2022), unless market conditions recover sufficiently for an operator to no longer require BES support for any of its services whether they be contracted or commercial.

5.3 Key Features of BES 2

5.3.1 BES 2 will continue to address the loss of farebox revenue, and the additional costs associated with responding to the pandemic. Under BES 2 the WG funding will sit alongside local authority funding provided through the Concessionary Travel Scheme and via Revenue Support Grant and the BSSG to make up the shortfall.

5.3.2 WG will be a co-signatory to the BES 2 agreement with bus operators, along with TfW³. Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local bus services receive this support. They need to sign up to the principle of the agreement and the relationship with their Lead Authority, in ensuring that the ongoing emergency funding meets their priorities and is delivered on their behalf. This will provide the legal basis for WG to make payments to the operators. In this way, WG can use its powers to support operators, whereas the additional funding would breach local authorities' de minimis limits for direct award contracts (further details in the briefing note prepared by TfW and LA representative sub group in Appendix 1, and the full proposed Agreement prepared by TfW is in Appendix 2). Local Authorities will remain responsible for those services which they currently contract directly with bus operators. Local Authorities will need to consider planning for contingencies, such as if the BES 2 agreement is not signed or the level of funding for BES 2 is reduced during the period of the agreement.

5.3.3 Key features of BES 2 will be as follows:

- i. Maximum term until 31st July 2022 or until operators enter into an embedded partnership agreement
- ii. development and delivery of a Reference Network, intended to provide a range of benefits to communities; multi-operator ticketing; and operator sign-up to an Economic Contract at the heart of WG's Economic Action Plan (and its principles of fair work, health, decarbonisation, skills and learning etc)
- iii. long term co-operation and co-ordination across TfW, LAs and operators by entering into partnerships with a clear set of obligations and shared standards
- iv. one agreement per operator in each of the regions that they work in, signed by Welsh Government, TfW, a lead authority and the operator
- v. operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date.

5.4 Beyond BES 2

³ Given that the agreement is under discussion between WG, operators and TfW as well as LAs, and must be approved by all parties, it may be subject to some changes before it is finalised.

- 5.4.1 Discussions are starting to take place in relation to the planning of future networks⁴ and the respective roles of WG, TfW, LAs and operators. It is important to note that these are not the prime focus of BES 2 agreement. It will be vitally important for further detailed discussions to take place with Members on these matters. However, this is not a reason to delay the signing of the BES 2 agreement. WG does believe that the BES 2 offer will help to engage operators in the discussions about the future at a time when their income is more dependent than ever on public sector support. In signing up to BES 2, though, LAs are agreeing to financial support being provided to the sector. They are not committing themselves to any specific, future model of bus service management as that will be the subject of further debate.

5.5 Legal Implications or Legislation Considered

- 5.5.1 A legal briefing to accompany the BES 2 agreement was provided by the Welsh Government to assist local authorities in their considerations. This is a specialist area of law and an independent local review will undoubtedly raise issues affecting all local authorities in Wales. It has been suggested that queries relating to the overarching agreement should be dealt with by one single legal adviser (Counsel or an 'expert' from within one of the participating Councils) to which all Councils agree to instruct. Legal questions to date have therefore been channelled to the Welsh Government through the Welsh Local Government Association.
- 5.5.2 As the BES2 contract will be signed by the Lead Authority, and not the constituent local authorities, there will need to be a back to back agreement with the Regional Lead Authority to ensure that our section 63 duties are not compromised, and that the ongoing emergency funding meets this authority's priorities and is delivered on its behalf under any prioritising of routes to which BES 2 is applied.
- 5.5.3 The legal framework is complex and centres on the Transport Act 1985 which effectively deregulated bus services. This agreement seeks to secure greater central coordination and planning of bus services in return for public sector funding. Notwithstanding any future proposals that may be considered in a future Bus Bill, the substantive duties and responsibilities in respect of bus services rest with Local Authorities and not Welsh Government or Transport for Wales.

6. ASSUMPTIONS

- 6.1 No assumptions have been made in the preparation of this report.

7. LINKS TO RELEVANT COUNCIL POLICIES

- 7.1 The following Council policies are relevant to the decision being requested.

7.2 Corporate Plan 2018-2023

⁴ The reference network will need to be designed and agreed collectively by WG, TfW and LAs and discussed with operators. An All-Wales Bus Network officer group has been established to progress the thinking around this.

7.2.1 The ITU service contributes towards the following Corporate Well-being Objectives:

Objective 4 - Promote a modern, integrated and sustainable transport system that increases opportunity, promotes prosperity and minimises the adverse impacts on the environment.

Infrastructure Division Objective: To work towards a safer environment through positive measures to reduce road accidents and particularly by protecting and providing for vulnerable road users.

8. WELL-BEING OF FUTURE GENERATIONS

8.1 This service contributes to the following Well-being Goals:-

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A globally responsible Wales

8.2 This proposal contributes to the Well-being Goals as set out in Links to Strategy above. It is consistent with the five ways of working as defined within the sustainable development principle in the Act in that:

- Long term resourcing of operation and management solutions of this specialised service provision allows for more effective and predictable resource/ financial commitments going forward.
- The service helps to prevent less sustainable travel options being used thus contributing to the well-being of its communities.
- It forms part of an overall strategy for the integration of local and regional transport systems where sustainable public transport, contributing to a low carbon future, is the option of choice.
- Collaboration with other organisations and local authorities enables a more effective and efficient service delivery.

9. EQUALITIES IMPLICATIONS

9.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified therefore a full EIA has not been carried out.

10. FINANCIAL IMPLICATIONS

10.1 There are no direct funding implications for the Council arising from this agreement and the additional funding being provided by WG enables services to be maintained. The Council will continue to fund bus services via the contracts that it has with individual bus operators.

11. PERSONNEL IMPLICATIONS

11.1 There are no personnel implications arising from this report.

12. CONSULTATIONS

12.1 This proposal has involved high level discussions between the principal parties to the agreement; Welsh Government, Transport for Wales, the Local Authorities within Wales and the bus operators, including the Confederation of Passenger Transport.

13. STATUTORY POWER

13.1 The following enabling statutory powers apply to the ITU service.

- Transport Act 1985
- Transport Act 2000
- Transport (Wales) Act 2006
- Learner Travel (Wales) Measure 2008

13.2 The legal framework is complex and centres on the Transport Act 1985 which effectively deregulated bus services. This agreement seeks to secure greater central coordination and planning of bus services in return for public sector funding. Notwithstanding any future proposals that may be considered in a future Bus Bill, the substantive duties and responsibilities in respect of bus services rest with Local Authorities and not Welsh Government or Transport for Wales.

14. URGENCY

14.1 *The Mayor has agreed that the report should be considered as urgent and not subject to call-in as the legal agreement providing further financial assistance must be signed by 31st January 2021. If the agreement is not signed this will seriously prejudice the interests of the council and the public it serves. Any decision taken by the Cabinet will be reported to the next meeting of the Council.*

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Consultees: Christina Harrhy, Chief Executive
Cllr John Ridgewell, Cabinet Member for Environment and Infrastructure
Mark S Williams, Interim Corporate Director of Communities
Richard Edmund, Corporate Director of Education and Corporate Services
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Clive Campbell, Transportation Engineering Manager
Anwen Cullinane, Senior Policy Officer – Equalities, Welsh Language and Consultation

Appendices:

- Appendix 1 BES 2 Briefing Document for Local Authorities
- Appendix 2 BES 2 Agreement December 2020
- Appendix 3 BES 2 Local Authority Legal Briefing