

Report



Deputy Leader / Cabinet Member for City Services Cabinet Member for Sustainable Development

Part 1

Date: 25 January 2021

Subject Bus Emergency Scheme (BES) – Request to all Councils to sign up to the BES 2 Scheme

Purpose To set out the wider context, background and reasons for the Bus Emergency Scheme (BES) and seek Cabinet Member approval for Newport City Council to sign up to the BES2 scheme. It also sets out Welsh Governments (WG) proposed reform of bus services in Wales and seeks Cabinet Member support in calling for a further report on proposed bus reform relating to future management of services in Wales.

Author Head of City Services

Ward All Wards

Summary The Covid-19 Pandemic has resulted in a significant reduction in bus patronage, which has reduced the viability of bus services. Emergency funding arrangements, administered by lead local authorities have been operating since April 2020 to maintain a core, albeit reduced bus network.

Welsh Government, working with Transport for Wales, are now proposing to enter into a longer-term agreement (designated Bus Emergency Scheme 2) with bus operators and local authorities to protect local bus services.

The proposed agreement formalises Welsh Government's commitment to supporting the recovery of local bus services because of the impact of COVID-19. Funding will address the loss of farebox revenue by operators and the additional costs associated with responding to the COVID 19 pandemic. Under the terms of the agreement, operators will be required to provide bus services that meet local needs under the direction of the Lead Authority for each region, working with and on behalf of its constituent local authorities. It will operate for a period no later than 31 July 2022 or until market conditions recover sufficiently for an operator to no longer require BES 2 support for any of its services (whether they be contracted or commercial). The report also sets out Welsh Governments proposed future reforms of bus services in Wales.

Proposal That Cabinet Members approve the principles of the BES 2 agreement (Appendix 2) to secure (Conditional) financial support for the bus sector and to establish a relationship with their regional lead authority and signatory that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf. Requests a further report on bus reform proposals relating to the future management of bus services in Wales.

Action by Head of City Services

Timetable Immediate

This report was prepared after consultation with:

- WLGA
- Welsh Government
- Transport for Wales
- Cabinet Member for City Services
- Cabinet Member for Sustainable Development
- Head of Law and Regulation
- Chief Financial Officer
- Head of People and Change

Signed

Background

Bus travel across Wales 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.

Subsequently, WG and local authorities (LA) 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. Prior to the pandemic, WG had consulted on a range of proposed changes to bus service delivery in Wales and a Bus Bill was to be brought forward during the current Senedd term. However, due to pressures associated with not only the pandemic but also the large volume of legal work generated by Brexit, WG was forced to postpone the planned legislation.

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, which is now responsible for rail services in Wales.

This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that both these issues are linked and should be considered together.

In the short term, the funding to keep operators afloat is being provided with a number of conditions designed to incentivise operators to engage in planned changes that are in line with longer-term ambitions for reform.

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 WG's direction of travel. Further details have been included in the Wales Transport Strategy (WTS), currently the subject of consultation. More recently, the Deputy Minister, Lee Waters MS, met with all Leaders to discuss the WTS but also to encourage LA's to sign up to BES2.

This is the latest phase of financial support to help operators through the period of the pandemic. 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 (who is also the WLGA's Transport Spokesperson), the deputy Transport Spokesperson, chairs of the four regional transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group is due to meet with Lee Waters on 18th January 2021.

The problems facing operators were recognised 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. Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs 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, Mandatory Concessionary Fare reimbursement and the 'My Travel Pass' scheme.

A Bus Emergency Scheme was subsequently introduced in July to provide ongoing support. This became known as 'BES 1' and it continued to maintain operators' income at known historic levels, based on what was being paid to them under previous grant schemes. In return for this financial support, WG 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.

BES 1.5' was introduced in August and was administered by the lead Authorities (Monmouthshire Council on behalf of the South East Wales Authorities), through whom BSSG had been paid since 2013. It provided £10m of so-called 'ramp up funding' to support 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, which was needed to meet increasing demand due to capacity constraints from social distancing.

BES 1.5 was then extended to the end of March 2021 following the announcement of a further support package in September 2020. Operators were again asked to sign up to a range of terms and conditions to access the funding. To date Welsh Government have made an additional £45m available over and above pre-covid budget allocations.

WG, working with Transport for Wales (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 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). BES 2 will continue to address the loss of farebox revenue and the additional costs associated with responding to the pandemic. Under BES 2, WG funding will sit alongside local authority funding provided through the Concessionary Travel Scheme and via Revenue Support Grant and the Bus Services Support Grant to make up any shortfall.

Welsh Government will be a co-signatory to the BES 2 agreement with bus operators, along with Transport for Wales. Given that the agreement is under discussion between Welsh Government, operators and Transport for Wales as well as local authorities, and must be approved by all parties. However, it is also recognised that it may be subject to some changes before it is finalised. Officers will inform members of any changes to the current draft proposal.

Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local services receive this support. Parties 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 in Appendix 1 and the full proposed Agreement is in Appendix 2).

LA's will retain responsibility for services they currently contract directly with bus operators and will need to consider planning for contingencies, such as if the BES2 agreement is not signed or the level of funding for BES2 is reduced during the period of the agreement.

Therefore the key features of BES2 are:

- Maximum term until 31st July 2022 or until market conditions recover sufficiently for an operator to no longer require support / operators enter into an embedded partnership agreement
- 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)
- 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
- one agreement per operator in each of the regions that they work in, signed by WG, TfW, a lead authority and the operator
- operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date.

Looking beyond BES 2, discussions are starting to take place in relation to the planning of future networks and the respective roles of WG, TfW, LAs and operators. Given the importance of bus services supporting wider Authority and Welsh Government policies, the reference bus 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

It is important to note however that network design and quality standards are not the prime focus of the BES2 agreement. It will be vitally important for further detailed discussions to take place with elected members on these matters.

This however is not considered a reason to delay the signing of the BES 2 agreement. WG and officers of the Council believe that the BES2 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, Newport would be agreeing to financial support of the sector. The Council would not however, be committing to any specific future model of bus service management as that will be the subject of further discussions.

Financial Summary

BES 2 is Welsh Government funded. Whilst there no direct cost to the authority, the partnership assumes current bus service contracts will be maintained.

Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Operators choose not to sign the BES 2 agreements and instead shrink their networks to the minimum required and/or reduce the quality of their services to make a commercial return.	M	M	Officers continue working with operators to address their concerns and ensure that all parties see this as a beneficial arrangement.	Head of City Services
The BES 2 arrangements breach competition, state aid or procurement law and are rendered invalid	L	L	WG/LA legal teams to ensure that the terms of the BES2 are compliant.	WG/LA legal teams
Operators challenge the local authority's ability to let new contracts on routes where the operator has registered a commercial service	L	M	Standards specified as part of BES2 provide an objective way to defend the local authority's right to let a supported contract where the service offered by the operator does not meet the specified standard. <i>Legal advice and guidance provided by WG to support this statement.</i>	Head of City Services
Additional funding from Welsh Government beyond the end of March	L	L	WG have committed additional funding from September 2020 to support local bus services and officials are working to	WG Head of City Services

2021 is yet to be confirmed			secure further funding to support these key services beyond the 2020/21 budget horizon.	
Funding operators in this way is not cost effective and/or operators are not incentivised to be efficient	L	L	Analyse data from operators to assess the cost effectiveness of the spend and shape contract terms to incentivise efficiency.	WG Head of City Services

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

One Newport Public Services Board Local Well-being Plan 2018-23

The Local Well-being Plan has five cross cutting interventions that support the priorities and well-being objectives of the Public Services Board (PSB). Sustainable Travel is one of the five cross-cutting interventions. The PSBs' sustainable travel vision is:

“Efficient, safe, and healthy travel, accessible to all, with overall low impact on the environment, prioritising walking, cycling and integrated public transport and also considering car sharing and ultra-low emission vehicles”.

The intervention sets out 3 steps that the PSB will be working on for the life of the plan.

1. PSB to become champions of sustainable travel, leading by example and reducing the public sector's contribution to air pollution.
2. Create an environment where public transport, walking and cycling is prioritised.
3. Encourage the use of ultra-low emission vehicles.

The preferred option supports these objectives

Corporate Plan 2017-22 & the Strategic Recovery Aims

The Corporate Plan runs to 2022 and has a primary vision to *‘Improving People’s Lives’*. It has four well-being objectives:

- 1) *To improve skills, educational outcomes & employment opportunities*
- 2) *To promote economic growth and regeneration whilst protecting the environment*
- 3) *To enable people to be healthy, independent and resilient*
- 4) *To build cohesive and sustainable communities.*

The Covid-19 health emergency has posed a significant and unprecedented challenge to the way in which we deliver our services and our way of life. Since March 2020, the Council's focus has been to preserve life, minimise the spread of the virus, and support our communities and the vulnerable.

Newport City Council strategic recovery aims have been drafted to reflect the work undertaken by the Council in response to the crisis while also considering the Council's long-term aims to 'build a better Newport' and support the Wellbeing of Future Generations (Wales) Act 2015.

The preferred option supports these aims

Sustainable Travel Strategy (Air, Noise & Sustainability Action Plan)

The council's Sustainable Travel Strategy (Air, Noise & Sustainability Action Plan) was designed, to outline the various actions the council will progress to reduce the level of pollution from road traffic and

provide a framework to develop local plans to target known areas of poor air pollution. The preferred option will support this strategy.

Options Available and considered

- Option 1 Cabinet Members approve the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to establish a relationship with their regional lead authority and signatory, that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf. Supports a call for a further report from Welsh Government on their proposed bus reforms relating to management of services in Wales
- Option 2 Cabinet Members withhold approval for the signing up of the Council to the Bus Emergency Scheme (BES) 2 but supports a call for a further report from Welsh Government on their proposed bus reforms relating to management of services in Wales

Preferred Option and Why

- Option 1 Cabinet Members approve the signing up of the Council to the Bus Emergency Scheme (BES) 2 and supports a call for a further report from Welsh Government on their proposed bus reforms relating to management of services in Wales

The benefit for operators is that a longer term funding agreement will be provided (up to July 2022) that assists planning and continuity of services. The ability to make a profit under the terms of BES 2 will assist future investment. No profit has been allowed in the emergency arrangements up to now.

The benefit for the public sector is that we can jointly better manage the recovery of bus services, whilst maintaining a core public bus network. The likely alternative impact of failing to take action is, as recovery begins, operators will shrink their networks to the routes and services that are commercially viable leaving the public sector to support an even larger subsidised bus service network.

The BES 2 arrangements are therefore seeking to ensure that operators are incentivised to support the recovery of the whole network and not just a limited number of commercial routes.

The public sector is taking the farebox risk under BES 2 and, as farebox levels rise, this revenue will augment the funding available to work with operators to support the recovery of services. This will benefit both sectors in the long term by building passenger confidence in a reliable and comprehensive public transport network.

Although recovery from the impact of the COVID 19 on patronage is likely to be slow, we do not expect operators to stay within the BES 2 arrangements forever. As passenger confidence returns and farebox recovers, we expect operators to exit the BES 2 arrangements and work with us under partnership agreements.

The partnership agreements will be based on agreed core sets of principles and behaviours that will be developed with operators as part of the BES 2 agreement.

Comments of Chief Financial Officer

The BES2 is funded by Welsh Government to provide the ongoing support to local bus services. Therefore there are no direct costs to the Council arising from this report. However, there is a risk that if the BES2 is not signed by the appropriate parties the Council will need to provide alternative contingencies, which at the present time would be unknown.

Comments of Monitoring Officer

The proposed action is in accordance with the Council's legal powers under the Transport Act 1985 regarding the commissioning of public bus services, and the Local Government (Contracts) Act 1997, regarding the entering-into of contracts for the discharge of statutory functions. The proposed BES2 is primarily intended to put on a formal contractual basis, the continued arrangements for Welsh Government to provide financial assistance to bus operators in the light of COVID-19. Previous financial support has been provided under general COVID-19 powers, but if this is to continue for a longer period and also enable operators to secure a reasonable profit margin, then the arrangement need to be structured as a public services contract award. The amount of this contract award would exceed the powers of local authorities to enter into direct awards for local service provision in accordance with their de minimis powers under section 63 of the Transport Act 1985. Therefore, BES2 is entered into in accordance with Welsh Government powers under section 7 of the Transport (Wales) Act 2006 and this direct award and payment by Welsh Government is compliant with public procurement and state aid rules. The BES2 agreement is intended to supplement existing section 63 contracts entered into by local authorities and allows for their terms to be varied accordingly. Therefore, regional Lead Transport authorities will be required to join-in the BES2 agreement on behalf of their local authorities to confirm the section 63 contract arrangements. The BES2 agreement also requires bus operators to agree to certain service standards and to undertake to enter into a voluntary framework or partnership agreement at a regional level for the delivery of public transport services. As such, this can be seen as a precursor to future strategic plans for the delivery of public transport services in Wales.

The report and advice recognised that the precise terms of the draft BES2 (Appendix 2) may need minor alterations or amendments before it can be signed by all the parties. Therefore, the Cabinet Member is asked to approve the principle of the BES 2 agreement and authorise the Head of Law & Regulation and the Head of City Services to agree the terms and sign the final agreement on behalf of the council.

Comments of Head of People and Business Change

Agreeing to take part in the Bus Emergency Scheme 2 would help support social, economic and environmental well-being within Newport by securing the provision of local bus services during the current health emergency whilst contributing to a sustainable public transport network for the future. The scheme is intended to arrest the decline of available bus services as a result of the current pandemic, and ensure that services will remain viable at a time when their income is dependent on public sector support, in this case through accessing Welsh Government funding.

There are no direct human resources implications arising for the report.

Comments from the Deputy Leader / Cabinet Member for City Services

This report raises two issues (i) short term survival of operators and (ii) longer term reform of the sector. There has been excellent, ongoing dialog between all parties to discuss and agree on support arrangements. I am pleased that the problems facing operators were recognised at an early stage of the pandemic. Looking ahead, I am pleased to see work on going to secure services for the future. I therefore support Option 1 and look forward to a further report from Welsh Government on their proposed bus reforms relating to management services in Wales

Comments from the Cabinet Member for Sustainable Development

I agree that the principles of the BES 2 agreement will ensure financial support is provided for the bus sector in Newport during this ongoing emergency, so that our priorities as a local authority are met. I also support the proposal that a further report from Welsh Government is necessary. It is vital that further consideration is given to bus reforms so that residents in Wales will have access to a sustainable and integrated public transport network

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

An Equalities Impact Assessment was undertaken 18th December 2020.
The full Fairness and Equalities Impact assessment is in appendix 3.

Wellbeing of Future Generations (Wales) Act 2015

The council is bound by the Future Generations (Wales) Act to ensure its activities and decisions are undertaken in a Sustainable way. It requires an LA to consider each of five pillars while making decisions.

a) Long term: The preferred option will be supporting the long-term social, economic and environmental well-being for future generations within the city as well as addressing a critical short term need. The proposal will secure the provision of local bus services during the current pandemic emergency whilst securing a sustainable public transport network in the future

b) Prevention: The preferred option has the capacity to directly improve the social, economic and environmental wellbeing of the residents and visitors to the city. This will be delivered by arresting the decline of available bus services as a result of the current pandemic, and ensure that services will remain sustainable and fit for purpose in the future.

c) Integration: The preferred option will secure sustainable transport for all users now and in the future. Reduced carbon emissions through modal transport shift and reduction in traffic congestion promotes ecosystems that support social, economic and ecological resilience and the capacity to adapt to change

d) Collaboration: The preferred option requires collaboration between both public and private sectors now and in the future, to ensure access to a fit for purpose bus service is maintained where needed across the City.

e) Involvement: The preferred option requires liaison with Welsh Government, other Welsh local authorities and private sector bus operators to secure agreement.

Crime and Disorder Act 1998

There are no discernible impacts on the Authority's duties under Section 17(1) of the Crime and Disorder Act 1998

Consultation

N/A

Background Papers

Appendix 1 BES 2 Welsh Government briefing note

Appendix 2 Agreement

Appendix 3 FEIA

Dated: 15 January 2021