

**EXPLANATORY MEMORANDUM TO
THE TRAVEL CONCESSIONS (ELIGIBLE SERVICES) (AMENDMENT) ORDER 2009**

No 575

1. Introduction

1.1. This Explanatory Memorandum has been prepared by The Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This instrument provides that certain types of services are not within the mandatory national bus concession in England. These exclusions will compliment the existing eligibility criteria to give greater certainty about which services are eligible for the concession. Travel Concession Authorities¹ (TCAs) who administer concessionary travel are responsible for assessing bus services against the criteria to determine whether a service should be included within the mandatory national concession.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1. None

4. Legislative Background

4.1. This instrument amends the Travel Concessions (Eligible Services) Order 2002² by adding a list of bus services which are not eligible services under section 146 of the Transport Act 2000.

5. Extent

5.1. This instrument applies to England.

6. European Convention on Human Rights.

6.1. As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The mandatory national bus concession is intended to improve the social inclusion of older and eligible disabled people in England by providing free travel on eligible local bus services in order to provide improved access to services and amenities.

7.2. The Concessionary Bus Travel Act 2007 introduced free off peak travel on local buses anywhere in England. However, TCAs are responsible for administering concessionary travel at a local level. They are responsible for assessing which services are included within the statutory concession. They also have powers to offer discretionary concessions over and above the statutory minimum.

7.3. If a service meets the eligibility criteria set out in the Travel Concessions (Eligible Services) Order 2002, it must be included in a local authority's mandatory concessionary travel scheme.

7.4. When the Travel Concessions (Eligible Services) Order 2002 was made, the mandatory bus concession was for half price, off peak bus travel within a local authority area only. However, in April

¹ Shire Districts, Unitary Authorities and Passenger Transport Executives

² SI 2002/1016.

2006 this was increased to free off-peak local bus travel and from 1 April 2008 the statutory concession was improved to give free off-peak local bus travel anywhere in England.

7.5. The significant increase in the statutory concession has brought the eligibility of services under greater scrutiny as the numbers of journeys being made by concessionaires have increased along with the amount of reimbursement paid to operators. This instrument is intended to give greater clarity about which services are eligible by explicitly excluding certain types of services not intended to form part of the statutory concession. However, local authorities will have the ability to offer concessionary travel on any services affected by the changes on a discretionary basis, under the Transport Act 1985. Furthermore, the amount of funding provided by Central Government to local authorities will not be affected by the proposed changes.

7.6. This instrument will explicitly exclude the following types of service from the bus concession:

- Services where more than half of the accommodation on the vehicle can be reserved in advance;
- Services intended to operate for less than six consecutive weeks;
- Services operated primarily for the purposes of tourism or because of the historical interest of the vehicle;
- Bus substitution (rail replacement) services;
- Services where the fare for the service includes a special amenity element.

7.7. Excluding services where more than half of the accommodation on the vehicle can be reserved in advance is intended to exclude, amongst other services, many intercity coach services. It is not the intention of the concession to offer free travel on these types of services. A separate voluntary arrangement exists under which the operators of a scheduled coach service can obtain reimbursement if they opt to provide half-fare concessions for those aged over 60 and disabled people.

7.8. The exclusion of services intended to operate for less than six consecutive weeks is intended to make clear that shuttle bus services provided only for special events are not part of the mandatory national concession. These services are by their nature short-term and for the dedicated purpose of taking people to a large special event. Such services are not within the spirit of the concession and as such are explicitly excluded.

7.9. Services operated primarily for the purposes of tourism, often charging premium fares and playing commentaries, should not be included in the mandatory national concession. Similarly, services that only operate because the vehicle used is of historic interest should not be included within the mandatory national concession.

7.10. The Department does not believe that bus substitution services, commonly referred to as rail replacement services, should be included in the mandatory national concession as they are intended for rail passengers whose service has been disrupted. A specific exemption will make this absolutely clear. This exemption would not include permanent bus services that "replace" a rail service that is permanently closed, only temporary bus substitution services.

7.11. The final category to be explicitly exempt from the mandatory national concession is services where the fare for the service includes a special amenity element. A fare falls into this category if it is significantly high in relation to the general level of fares for comparable journeys, for example because it includes complimentary drinks, parking or a commentary. However, local authorities are able to include any service affected by this instrument in their concessionary travel scheme on a discretionary basis if they so wish.

8. Consultation outcome

8.1. A clear majority of responses to the consultation were in favour of each of the proposals. Some concerns were raised about possible unintended consequences of the proposals, which were

taken on board during the drafting of the instrument and resulted in some minor changes to the proposals.

8.2. No comments were received about the impact assessment, apart from a suggestion that it was made explicit that the administrative costs quoted did not represent a guideline amount to be used in reimbursement claims. We have taken this on board for the final draft.

8.3. A full consultation response will be published on the Department's website on Monday 9th March.

9. Guidance

9.1. The Department will publish a full consultation response document which states how we believe the instrument should be interpreted.

10. Impact

10.1. An impact assessment been completed and is attached at Annex A.

11. Regulating small businesses

11.1. Small businesses (i.e. small operators) will be affected by the Order. However, there should be no impact on small firms as, regardless of the eligibility criteria concessionary reimbursement does not subsidise the operators. Instead, no matter which services are covered by the scheme, they should all be reimbursed on a no better, no worse basis.

12. Monitoring and review

12.1. Not applicable.

13. Contact

13.1. Peter Laslett at the Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR, Tel: 0207 944 2238, email: Peter.Laslett@dft.gsi.gov.uk

Summary: Intervention & Options

Department /Agency: DfT	Title: Impact Assessment of clarifying eligible services in the concessionary fare scheme	
Stage: Consultation	Version: 2.1	Date: 17 Oct. 08
Related Publications: Consultation on Eligible Service for the Statutory Bus Concession in England		

Available to view or download at:

<http://www.dft.gov.uk>

Contact for enquiries: Peter Laslett

Telephone: 0207 944 2238

What is the problem under consideration? Why is government intervention necessary?

The increase in concessionary travel and the introduction of England-wide concession has revealed that there is uncertainty about which services are eligible for concessionary fares and that there is the potential for some services which are not within the spirit of the legislation to be covered by the mandatory national concession.

What are the policy objectives and the intended effects?

The policy intention is to reduce any potential uncertainty about which services are eligible for the mandatory national concession and to ensure that only services intended to be covered are eligible. The intended effect is to reduce the potential for confusion amongst local authorities and operators when assessing which services should be included within the concession and make it clearer for concessionary pass holders. The objective is also to explicitly exclude services that are not within the spirit or policy aims of the concessionary travel legislation.

What policy options have been considered? Please justify any preferred option.

Two options are being considered:

1. Do Nothing – Do not make any changes to the eligibility criteria for services covered by the mandatory national concession
2. Amend the existing criteria to clarify the services eligible for the mandatory national concession. Option 2 is preferred as it will meet the objectives by introducing certainty.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? April 2010

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Paul ClarkDate: 9th March 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Introduce regulations to clarify eligible services in the concessionary fare scheme
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Some concessionary pass holders will no longer be able to travel on routes that were previously eligible. This estimate is for coach trips (likely to be the largest category of trips affected) and is based on 2008/09 information.			
	One-off (Transition) Yrs				
	£ 0				
	Average Annual Cost (excluding one-off)				
	£ 130,000	Total Cost (PV)	£ 1,100,000		
Other key non-monetised costs by 'main affected groups' Costs to concessionary pass holders from not being able to travel on non-coach trips i.e. other categories of service that may previously have been eligible.					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Local authorities will not have to reimburse operators for concessionary travel on services that were no longer eligible. Estimated savings for coach trips £70,000. Estimated savings from no longer administrating reimbursement £80,000.			
	One-off Yrs				
	£ 0				
	Average Annual Benefit (excluding one-off)				
	£ 150,000 10	Total Benefit (PV)	£ 1,250,000		
Other key non-monetised benefits by 'main affected groups' There will also be large administrative savings for operators and local authorities who will no longer have to negotiate and claim reimbursement for these services. Savings to local authorities for not having to reimburse non-coach schemes.					

Key Assumptions/Sensitivities/Risks

Costs and benefits are sensitive to the number of services that are not within the spirit of the legislation that would be included in the scheme in future years in the absence of regulation.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 150,000
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	1 April 2009			
Which organisation(s) will enforce the policy?	Local Authorities			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Background

The mandatory national bus concession is administered locally by Travel Concession Authorities (TCAs), who are responsible for establishing local schemes and reimbursing operators so that they are left “no better, no worse off” by the concession.

The criteria for which services are included in the statutory concession are set out in the Travel Concessions (Eligible Services) Regulations 2002. If a service meets these criteria, it must be included within the concession. Local authorities also have the discretion to include services that do not meet the criteria in their local schemes on a voluntary basis at their own cost.

Rationale for Government Action

The regulations were made in 2002. Since then, the statutory concession has increased in value considerably. The move to England-wide concessionary travel in particular has brought the eligibility criteria under greater scrutiny. While the current criteria are fit for the great majority of services, there is inevitably some uncertainty at the margins. This may result in services being included within the mandatory national concession which are not intended to be. As concessionaires become more aware of these services, there is likely to be an increase in the numbers of people using them. There is also the potential for an increase in disputes between local authorities and operators as to which services are eligible, which may end in legal action.

Any change is intended to provide clarification, rather than alter the original intention as to which services are and are not eligible. As such, no significant impact is expected. If a currently eligible service ceased to be eligible as a result of the proposals, local authorities retain the flexibility to include the service as a discretionary element to the scheme. If they chose to do so, they would not incur additional costs over and above those already incurred.

Descriptions of Options Considered

Option 1 – Do Nothing

Do not add an extra category of services that should be excluded from the mandatory national concession.

Option 2 – Add an extra category of services that should be excluded from the mandatory national concession

In total, five new exclusions were considered. These were:

1. Services where more than half of the accommodation on the vehicle can be reserved in advance;
2. Services intended to run for a period of less than 6 consecutive weeks;
3. Services operated primarily for the purposes of tourism or because of the historical interest of the vehicle;
4. Bus substitution (Rail replacement) services;
5. Services where the fare charged by the operator has an amenity element.

Responses to Consultation

A clear majority of responses to the consultation were in favour of each of the proposals. Some concerns were raised about possible unintended consequences of the proposals, which were taken on board during the drafting of the instrument and resulted in some minor changes to the proposals.

No comments were received about the impact assessment, apart from a suggestion that it was made explicit that the administrative costs quoted did not represent a guideline amount to be used in reimbursement claims. We have taken this on board.

Cost / Benefit Analysis

It is not possible to accurately assess the costs and benefits of the proposal as there is limited information on the extent to which these types of services are currently being included in the scheme. The analysis below represents the Department's best estimates based on the information available.

Option 1 - Do Nothing

Costs

If the government takes no action, services that may not be intended to be included within the spirit of the legislation will be included within the mandatory national concession. This will result in concessionaires travelling for free and local authorities having to reimburse operators for the revenue foregone and any additional costs.

The uncertainty about eligibility, the increasing cost of reimbursement and the popularity of the concession means that it is likely that there would be increasing disputes between operators and local authorities. This would lead to increased administrative costs during negotiations and possibly legal costs.

Benefits

If there was no change to the current criteria, then older and eligible disabled people would benefit from continued concessionary travel on these services even though they may not be intended to be included.

Option 2 - Introduce regulations to clarify eligible services in the concessionary fare scheme

Costs

If the proposed changes were made to the regulations, some services which might previously have been adjudged eligible would no longer be eligible for the statutory concession. This will include a variety of services such as tourist buses, some park and ride services and sightseeing buses. The services with the biggest impact however is likely to be those coach services which are currently registered as local services for part of their journeys. Based on initial usage figures supplied by operators, we estimate that around 22,500 coach trips will be made on such services in the financial year 2008/09, although this is a very rough estimate.

Although it is not possible to accurately calculate an average fare, such services are likely to have a higher fare than "typical" bus services. Based on information supplied by operators we judge that an average fare of around £8 seems a reasonable estimate.

To calculate the change in welfare it is necessary to assume an elasticity for the switch from free fares to full fares. If the elasticity is assumed to be -0.9 and a negative exponential demand curve is used then the number of trips in the absence of a scheme would be approximately 9,000.

Using the rule of a half to approximately estimate the change to consumer welfare:

$$0.5 \times (8-0) \times (22,500+9,000) = \text{£}126,000$$

Rounded to the nearest £10,000

=£130,000

Benefits

Saving to Reimbursement Costs

We estimate that around 22,500 coach trips will be made during 08/09 on services that are not within the spirit of the legislation at an assumed average fare of £8. If an elasticity of -0.9 and a negative exponential demand curve is used as above then the revenue reimbursement rate would be approximately 40%. This would imply 9,000 non-generated trips and a revenue reimbursement of £72,000 or £70,000 to the nearest £10,000. (This does not include additional costs).

As knowledge about these services increases, the number of trips is likely to increase.

Reimbursement will not increase in a linear manner, since operators only receive additional costs for generated travel. However, reimbursement costs would be likely to increase over time, which would mean that the benefits for local authorities would be likely to increase in future years.

The savings for local authorities may be reduced if local authorities decide to include some of these services in their concessionary travel schemes on a voluntary basis.

Savings to Administration

Operators and local authorities would benefit from having a reduced administrative burden on services that are excluded from the concession. We estimate that if the eligibility criteria for services were not clarified there could be at least 40 schemes that coach companies would have to administer. This should not be taken as a guideline figure for reimbursement purposes. The costs to operators from administering these coach schemes however have the potential to be substantially smaller than the amounts for administering all concessionary travel. If a conservative assumption was made that the cost to coach companies of administering these concession was £2,000 then the administration savings would be estimated at £80,000 per year. It should be noted that the costs to individual schemes will of course vary considerably depending on the size of the scheme and other local factors. Since operators are compensated for their administration costs under the reimbursement from local authorities, this potential saving would accrue to local authorities.

Conclusions

Based on the approximate estimates made above the benefits from clarifying eligibility for services in the concessionary fare scheme benefits exceed the costs. This is due to potential savings to administration costs which could be disproportionate if the eligibility criteria for services were not clarified.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Competition Assessment

There should be no impact on competition as whatever the eligibility criteria, concessionary reimbursement does not subsidise the operators. Instead, no matter which services are covered by the scheme, they should all be reimbursed on a no better, no worse basis.

Small Firms Impact Test

There should be no impact on small firms as, regardless of the eligibility criteria, concessionary reimbursement does not subsidise the operators. Instead, no matter which services are covered by the scheme, they should all be reimbursed on a no better, no worse basis.

Legal Aid Impact Assessment

No legal aid impact is envisioned.

Sustainable Development/Carbon Assessment/Other Environment Impact Assessment

No impact on the environment is envisioned.

Health Impact Assessment

No impact on health is envisioned.

Race Equality/Disability Equality/Gender Equality

No impact on equalities is envisioned.

Human Rights

No human rights impact is envisioned.

Rural Proofing

No specific rural issues have been identified. If coach services that serve mainly rural communities were previously judged to have been eligible but no longer qualify as eligible under the revised order, local authorities are free to continue to offer concessions on these services on a discretionary basis. Given that the authority in question would have previously been paying for these concessions anyway, the change would result in no net increase in costs to the authority.