

**EXPLANATORY MEMORANDUM TO
THE RIGHTS OF PASSENGERS IN BUS AND COACH TRANSPORT (EXEMPTIONS
AND ENFORCEMENT) REGULATIONS 2013**

2013 No. 1865

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The statutory instrument revokes the Rights of Passengers in Bus and Coach Transport (Exemptions) Regulations 2013 (in light of the accession to the European Union of the Republic of Croatia on 1st July 2013) and (subject to the omission of references to Croatia and certain other technical amendments) re-enacts those Regulations in order to maintain in effect within Great Britain the exemptions available to EU Member States under Articles 2(4), 2(5) and 16(2) of Regulation (EU) No 181/2011 on the rights of passengers in bus and coach transport.

2.2 The statutory instrument also designates those bodies responsible for the enforcement and handling of complaints in respect of Regulation (EU) No 181/2011, establishing enforcement measures, including penalties applicable to infringements and designating certain bus and coach terminals at which assistance for disabled persons and persons with reduced mobility must be provided.

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

None.

4. Legislative Context

4.1 The European Commission published its proposal for a Regulation on bus and coach passenger rights in December 2008. The proposal was brought forward to meet the European Commission's objective of ensuring equal treatment for all passengers by establishing passenger rights in all modes of transport, as set out in their White Paper "European transport policy for 2010: time to decide".

4.2 Its full title is Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004. Similar legislation already exists for air, rail and maritime transport.

4.3 The Regulation lays out the responsibilities of industry participants, including carriers, tour operators and terminal managing bodies [this amendment is for consistency with para 4.6 below; and the regulation applies to ‘terminal managing bodies’ not ‘terminal owners’], in the case of delays, cancellations, accidents and other issues affecting passengers, including disabled passengers and passengers with reduced mobility.

Exemptions

4.4 All provisions of the Regulation apply to regular domestic and international passenger services of 250km (155 miles) or longer. Although the Regulation is directly applicable, Member States have the ability to make use of a number of time-limited exemptions. These exemptions include:

- **Article 2(4)** - With the exception of certain mandatory provisions of the Regulation (see paragraph 4.5 below), Member States may on a transparent and non-discriminatory basis, exempt domestic regular services from the application of the Regulation for four years from 1 March 2013. This exemption may be renewed once.
- **Article 2(5)** - For a maximum period of four years from 1 March 2013, Member States may, on a transparent and non-discriminatory basis, exempt from the application of the Regulation particular regular services because a significant part of such regular services, including at least one scheduled stop, is operated outside of the EU. Such exemptions may be renewed once.
- **Article 16(2)** - A Member State may for a maximum of five years from 1 March 2013 grant an exemption to drivers from the requirement for disability awareness training for personnel of carriers and terminal managing bodies.

4.5 A limited number of mandatory provisions of the Regulation also apply to regular services shorter than 250km, with a very limited number of provisions also applying to occasional services (private hire and tours). No exemptions are available in these cases.

Enforcement

4.6 **Article 28** of the Regulation requires each Member State to designate a new or existing body or bodies responsible for the enforcement of the Regulation as regards regular services from points situated on its territory and regular services from a third country to such points. Each body shall, in its organisation, funding decisions, legal structure and decision making, be independent of carriers, tour operators and terminal managing bodies.

4.7 In addition, **Article 28** states that any passenger may submit a complaint, in accordance with national law, to the designated enforcement body, or to any other appropriate body designated by a Member State, about an alleged infringement of the Regulation. A Member State may decide that the passenger as a first step shall submit a complaint to the carrier in which case the appropriate complaints body designated by the Member State shall act as an appeal body for any complaints not resolved.

4.8 **Article 31** of the Regulation states that all Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take

all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Designation of terminals

4.9 Finally, **Article 12** of the Regulation requires Member States to designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility shall be provided.

5. Territorial Extent and Application

5.1 The instrument applies to Great Britain.

5.2 Similar legislation will be made in Northern Ireland.

6. European Convention on Human Rights

6.1 Norman Baker MP has made the following statement regarding Human Rights:

In my view the provisions of the Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

Exemptions

7.1 One of the Government's Guiding Principles when adopting any EU legislation is to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts. In line with this guiding principle and to end so-called "gold-plating" it is Government policy not to go beyond the minimum requirements of European legislation, unless there are exceptional circumstances.

7.2 Therefore, it is Government policy to make full use, where possible, of any available derogation (exemptions) within the Regulation which would reduce costs to business.

7.3 The exemptions available under Articles 2(4) and 2(5) of the Regulation will apply for 4 years from 1st March 2013 and may be renewed once in March 2017.

7.4 The exemption available under Article 16(2) of the Regulation will apply for 5 years and cannot be renewed. The Government has made a commitment to review the application of this exemption in March 2014.

7.5 A further exemption is available which would permanently exempt domestic regular services from the majority of Chapter three on the 'Rights of disabled persons and persons with restricted mobility where their national rules provide the same or better level

of protection. The Government concluded that national rules cannot be considered to apply the same level of protection and therefore this exemption will not be applied.

Enforcement

7.6 In designating enforcement and complaints bodies, the Government looked to use existing bodies where possible to avoid additional costs.

7.7 The statutory instrument therefore designates Traffic Commissioners as the national enforcement body under Article 28 for Great Britain, responsible for the enforcement of the Regulation in respect of bus/coach operators.

7.8 In terms of the sanctions that could be imposed on bus/coach operators, the Government has adopted a civil penalty system similar to the approach adopted in section 155 of the Transport Act 2000, whereby the penalty will be such amount as the relevant Traffic Commissioner sees fit given the circumstances of the case but must not exceed £550 multiplied by the total number of vehicles which the operator is licensed to use.

7.9 The statutory instrument also gives Traffic Commissioners enforcement powers in respect of terminal managing bodies who are either bus/coach operators or local transport authorities. Whilst the Government does not think it would be appropriate to enable Traffic Commissioners to impose financial penalties on local authorities, powers are given to enable them to issue improvement notices to local transport authorities and to require a local authority to attend a public inquiry.

7.10 For the limited number of provisions within the Regulation affecting travel agents and tour operators, the Government has designated local weights and measures authorities as the enforcement body, with a maximum penalty of up to 10% of turnover.

7.11 The Statutory Instrument does not introduce any new criminal offences for breaches of the Regulation.

7.12 For the purposes of the complaints handling requirements of Article 28 the Statutory Instrument designates the existing complaints handling bodies in England, Scotland, Wales (Bus Users UK) and London (London TravelWatch).

Designation of Terminals

7.12 Following discussion with the bus and coach industry and consultation with other stakeholders, the Statutory Instrument designates only London Victoria and Birmingham coach stations as terminals where guaranteed assistance for disabled persons and persons with reduced mobility must be provided.

- ***Consolidation***

7.13 The Statutory Instrument consolidates additional provisions required by the EU Regulation with the amended and re-enacted provisions of the Rights of Passengers in Bus and Coach Transport (Exemptions) Regulations 2013.

8. Consultation outcome

8.1 A twelve week formal public consultation on the application of the Regulation in Great Britain took place between 18th July and 11th October 2012. The consultation sought views on the proposed use of the exemptions described in this memorandum; the designation of terminals at which assistance must be provided to disabled persons and persons of reduced mobility; the designation of national enforcement bodies; and penalties applicable to infringements of the Regulation. This included an Impact Assessment of likely costs and benefits.

8.2 208 responses to the consultation exercise were received, 182 of these in the form of a campaign instigated by the Royal National Institute of Blind People (RNIB) objecting to applying the exemption concerning disability awareness training. The remaining responses were mainly from the bus and coach industry and charities.

8.3 A full list of respondees and a summary of their responses is available at the following website:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86082/consultation-responses.pdf

8.4 In response to the RNIB's concerns about the exemption for disability awareness training, Ministers have agreed to review this in 12 months to investigate how many bus drivers have received disability awareness training. Ministers have also written to the industry encouraging an increased uptake of disability awareness training.

8.5 The proposed use of the remaining exemptions described in this memorandum generated varying levels of agreement and disagreement from consultation respondees. Approximately 20 responses were received to each proposed exemption with a roughly equal split of those in agreement and disagreement.

8.6 The Government's policy is to apply all exemptions where possible and no information was provided in response to the consultation to overturn that policy.

8.7 Consultees were generally in agreement with the Government's proposed on the designation of enforcement bodies, the handling of complaints and the designation of bus and coach terminals at which assistance for disabled persons and persons with reduced mobility. Between 0 and 19 responses were received on these questions, in all cases the majority were in agreement with the proposal in the consultation document. Of those not in agreement, no evidence was provided that was sufficient to change the Government's view on enforcement. A full detail of the responses received is available in the Department's summary of responses and all of the consultation responses have been published in their entirety on the Department's website.

9. Guidance

9.1 There is no statutory guidance associated with the instrument. However, the Department for Transport will look to issue guidance on the wider application of the Regulation in Great Britain.

10 Impact

10.1 Applying these exemptions will ensure UK businesses are not put at a competitive

disadvantage compared with their European counterparts. The use of exemptions would also provide estimated monetised benefits of £8.2m to bus and coach operators and terminal managing bodies (including local authorities). There is an estimated net disbenefit of £1.1m, this is almost entirely a cost to Government of appointing enforcement bodies to enforce the entire Regulation.

10.2 Other than the initial costs of establishing enforcement and complaints bodies (a mandatory requirement of the EU Regulation), the impact on the public sector is likely to be minimal.

10.3 A final impact assessment has been prepared and is attached to the memorandum. The impact assessment analyses the effects of applying the various exemptions available under the Regulation as well as the costs of enforcement

11. Regulating small business

11.1 Applying the exemptions permitted by Articles 2(4), 2(5) and 16(2) of the Regulation will provide more time for the bus/coach industry to prepare for the requirements of the Regulation, which is likely to be of benefit to smaller businesses.

12. Monitoring and review

12.1 The Department for Transport will monitor feedback through statistics and stakeholder discussions.

13. Contact

13.1 Ben Jones at the Department for Transport, telephone number 020 7944 4731 or email ben.jones@dft.gsi.gov.uk, can answer any queries regarding the instrument.