

EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE VEHICLES (CONDUCT OF DRIVERS, INSPECTORS,
CONDUCTORS AND PASSENGERS) (AMENDMENT) (ENGLAND AND WALES)
REGULATIONS 2015

2015 No. 888

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 This instrument updates the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 ("Conduct Regulations") by substituting references to more recent legislation and removing any requirements which duplicate other legislation or may be covered more effectively by a bus or coach operator's own conditions of carriage.

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

3.1 None.

4. **Legislative Context**

4.1 The Conduct Regulations set out the duties and expected behaviour of bus drivers, conductors, inspectors and passengers on bus and coach services. These Regulations were made pursuant to sections 24(1) and 25(1) of the Public Passenger Vehicles Act 1981.

4.2 The Conduct Regulations re-enact, with amendments, the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations 1936, which were originally made pursuant to the Road Traffic Act 1930.

5. **Territorial Extent and Application**

5.1 This instrument applies to England and Wales only.

6. **European Convention on Human Rights**

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

7. **Policy background**

- What is being done and why

7.1 In response to the Government's 'Red Tape Challenge' exercise in 2011, the Department for Transport committed to review the Conduct Regulations.

7.2 The purpose of this instrument is to correct a number of outdated definitions and references to other legislation, update the rules on interactions between drivers, conductors and passengers and remove legal requirements that are now covered elsewhere in legislation or by operator's conditions of carriage.

7.3 Regulation 3 of the Conduct Regulations currently includes definitions for 'disabled person', 'hearing dog', 'guide dog' and 'assistance dog'. These cross-refer to the Disability Discrimination Act 1995, which has been superseded by the Equality Act 2010. The definitions do not take account of the 2010 Act or the new definition of 'assistance dog' that now appears in section 173(1) of that Act. This instrument therefore up-dates the definition of 'disabled person', so that it cross-refers to the 2010 Act; omits the references to both 'hearing dog' and 'guide dog'; and amends the definition of 'assistance dog' so that it incorporates references to dogs which have been trained to guide blind and deaf persons.

7.4 Regulation 4 of the Conduct Regulations currently provides that a driver shall not, when a vehicle is in motion, hold a microphone or speak to any person either directly or through a microphone, except in case of an emergency or on grounds of safety or about the operation of the vehicle, provided that he can do so without being distracted. Regulation 4 also provides that this should not prevent the driver of a vehicle from making short statements from time to time limited to indicating the location of the vehicle or operational matters, provided that he can do so without being distracted from his driving of the vehicle.

7.5 In its current form, regulation 4 is unnecessarily detailed, repetitious and overly prescriptive. It prevents a bus driver from using any microphone, whether or not the microphone needs to be held. This instrument therefore simplifies the rules for drivers and permits the use of hands-free microphones. This will better enable drivers to announce the location of the vehicle, or its next stop, which may be of use to many disabled (and other) passengers.

7.6 Regulation 5(3)(a) of the Conduct Regulations currently provides that a driver shall, if requested by a constable or other person having reasonable cause, give particulars of the licence by virtue of which he drives the vehicle. As a police constable is more likely to rely on powers to request details of a driver's license under section 164 of the Road Traffic Act 1988 (power of constables to require production of driver licence etc.) and section 164 also gives the same power to DVSA vehicle examiners, this instrument omits the obligation to give licence particulars to a constable or other person having reasonable cause. However, it retains the requirement for drivers to provide their name and the name of their employer, if requested by a constable or other person having reasonable cause.

7.7 Regulation 5(3)(b) of the Conduct Regulations currently provides that no driver, inspector or conductor shall smoke in or on a vehicle except in one of the circumstances specified in regulation 5(4). However, since the Conduct Regulations were last updated, section 5 of the Health Act 2006 has come into force, pursuant to which regulations have been made which provide for smoke-free vehicles, including buses and coaches. This instrument therefore omits regulations 5(3)(b) and 5(4) in

their entirety as the Smoke-free (Exemptions and Vehicles) Regulations 2007 (SI 2007 No. 765) more effectively address the issue of smoking.

7.8 Regulation 5(6) of the Conduct Regulations currently provides that "*a conductor shall not, while the vehicle is in motion and without reasonable cause, distract the driver's attention or obstruct his vision*". As the role and number of conductors operating on public service vehicles has altered significantly since 1990 and also because this matter is generally covered by each operator's conditions of employment and basic training, this instrument omits this provision in its entirety.

7.9 Regulation 6(1)(d) of the Conduct Regulations currently provides that no passenger may "*smoke or carry lighted tobacco or light a match or a cigarette lighter in or on any part of the vehicle where passengers are by a notice informed that smoking is prohibited, unless the vehicle has been hired as a whole and both the operator and the hirer have given their permission to the contrary*". As with regulations 5(3)(b) and 5(4), this instrument omits regulation 6(1)(d) in its entirety as this issue is now dealt with effectively by the Smoke-free (Exemptions and Vehicles) Regulations 2007.

7.10 Regulations 6(1)(e) and (f) of the Conduct Regulations currently provide that passengers may not "*distribute any paper or other article for the purpose of giving or seeking information about or comment upon any matter*" or "*sell or offer for sale any article*" without the permission of the operator/driver. Given that these minor indiscretions are difficult to enforce without a civil penalty system and are generally covered by each operator's conditions of carriage, this instrument omits regulations 6(1)(e) and (f) in their entirety.

7.11 Regulation 7 of the Conduct Regulations currently assumes that passengers pay for journeys by the traditional but increasingly out-dated method of tendering a cash payment in exchange for a ticket. This instrument amends regulation 7 to recognise the introduction of concessionary travel passes and smartcards.

- Consolidation

7.12 No consolidation is necessary.

8. Consultation outcome

8.1 Between 11th November and 23rd December 2014, the Department conducted a 6 week consultation on all of the proposed changes to the Conduct Regulations. The consultation also provided an opportunity for those responding to outline their own views on which parts of the Conduct Regulations should be removed, updated or simplified to ensure that this legislation is fit for purpose.

8.2 Thirty one responses to the consultation were received, with a mixture of support for a majority of the proposed changes and concern that the proposals do not go far enough. Responses were received from individuals, local authorities and their representatives, operators and their representatives, passenger representative groups and disability campaign groups.

8.3 The proposal to update the definition of 'assistance dog' (originally, by simply cross-referring to section 173(1) of the Equality Act 2010) received unanimous support (23 in favour, none against).

8.4 The proposed changes to regulations 4 and 5 also received significant support (20 in favour, 4 against). Those with an objection to these proposals felt that the legal requirement for drivers to provide their licence details to a police constable should remain in place to avoid reliance on other legislation and that restrictions on smoking should be extended to include anywhere in the vicinity of the vehicle.

8.5 The proposed changes to regulations 6 and 7 received a more mixed response (9 in favour, 15 against). Having noted strong opposition from bus industry representatives to the suggested removal of Regulation 7(2)(c) in particular, this proposal was dropped. Others with an objection to the proposals in respect of regulations 6 and 7 expressed concern that the removal of regulations forbidding the sale or distribution of items on board buses could lead to the harassment of passengers, with drivers powerless to prevent this and that leaving any such matter to the discretion of individual operators/drivers could lead to confusion or inconsistency. The Department noted concerns raised over the omission of regulations 6(1)(e) and (f), but received no evidence that these regulations are used in practice. Other proposed changes to regulations 6 and 7, including those on passengers smoking and paying for their journey, received far more support and very little opposition.

8.6 The Department's proposal not to make any alterations to regulations 11 to 17, which set out the responsibilities for drivers and conductors in respect of wheelchair users and disabled passengers received a balanced response (15 in favour, 12 against). The majority of those who objected to this proposal requested that these regulations should be amended to provide clearer rules on who should have priority when using the wheelchair space on a local bus service, following the recent Court of Appeal decision in *Paulley v First Group plc*.

8.7 For a more detailed summary of the responses and the Government's position see the "Response to the consultation on reviewing the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990" (available at www.gov.uk).

9. Guidance

9.1 There is no statutory guidance associated with this instrument. However, the Department will publish an explanation of the changes made to the Conduct Regulations on the Gov.uk website.

10. Impact

10.1 The proposed changes made by this instrument relate to tidying up and simplification of the Conduct Regulations. It is the Department's assessment, based on responses to the Red Tape Challenge and further discussion with relevant stakeholders, that any impacts in terms of costs and benefits arising from the proposed changes would be small, and cannot be monetised based on the information currently available. There is likely to be net zero impact on all sectors.

10.2 A more detailed Impact Assessment will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The Conduct Regulations will continue to apply to a number of small businesses. However, as explained above, the changes made by this instrument are minor and likely to have a zero net impact on all businesses affected.

11.2 In addition, as a Red Tape Challenge commitment, this instrument removes a number of requirements which duplicate other legislation or can be covered more effectively elsewhere, with the aim of cutting down unnecessary burdens on both small businesses and members of the public.

12. Monitoring & review

As this instrument is a deregulatory Red Tape Challenge measure, monitoring and review would not be appropriate.

13. Contact

Ben Jones at the Department for Transport Tel: 020 7944 4731 or email: Ben.Jones@dft.gsi.gov.uk can answer any queries regarding this instrument.