

EXPLANATORY MEMORANDUM TO
THE MANDATORY TRAVEL CONCESSION (ENGLAND) (AMENDMENT)
REGULATIONS 2022

2022 No. 284

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (“DfT”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument extends the current temporary suspension of the requirement for Travel Concession Authorities (“TCAs”) to ensure that operators are not better off as a result of reimbursement arrangements. The extension is to last for a limited time period during the Covid-19 pandemic recovery.

2.2 The England National Concessionary Travel Scheme (ENCTS) is administered locally by TCAs. From 1st April 2011, the following authorities have been classed as TCAs: County Councils, Unitary Authorities, Passenger Transport Executives and London Boroughs.

2.3 The current temporary suspension is made under the Mandatory Travel Concession (England) (Amendment) Regulations 2021 (S.I. 2021/205) (the “2021 Regulations”) and would, but for this instrument, end on 5th April 2022. This instrument extends the suspension of the requirement until the end of 5th April 2023, at the end of the 2022/23 financial year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument amends the Mandatory Travel Concession (England) Regulations 2011 (S.I. 2011/1121) (the “2011 Regulations”).

6.2 The 2011 Regulations make provision for the reimbursement arrangements between TCAs and operators of public passenger transport services providing concessions under section 145A of the Transport Act 2000 (c. 38). The 2021 Regulations removed the requirement in the 2011 Regulations that it must be an objective of a TCA when

formulating reimbursement arrangements that the operator is no better off as a result of providing a concession. The removal of the requirement made by the 2021 Regulations has effect until the end of 5th April 2022. These Regulations extend the removal of the requirement until the end of 5th April 2023.

- 6.3 This continued removal of this requirement has effect until 5th April 2023 so that after that date the requirement will be reinstated.

7. Policy background

What is being done and why?

- 7.1 ENCTS funding forms a significant revenue stream for bus operators and is administered by TCAs who are local government bodies. TCAs are legally required to reimburse bus operators for carrying concessionary passengers. This funding is normally used to provide those who have reached State Pension Age, and those with eligible disabilities with free bus travel by reimbursing bus operators. TCAs receive allowance for this funding from the Department for Levelling Up, Housing and Communities as part of their Revenue Support Grant, which is allocated by Her Majesty's Treasury (HMT) through a formula to support a wide range of different activities. TCAs have the discretion to offer additional concessions, such as extended hours of travel, or open the scheme to other groups of people, but receive no additional funding to do so.
- 7.2 Emergency funding packages were agreed between HMT and the DfT to support the bus industry in connection with the Covid-19 pandemic. The emergency funding was established on the basis that local government concessionary fares funding to operators continued at pre-Covid-19 levels. The Covid-19 Bus Services Support Grant (CBSSG) provided up to £1.5 billion of emergency funding to support operators in maintaining high service levels, despite a drop in patronage due to Covid-19. CBSSG was then superseded by the Bus Recovery Grant (BRG) on 1st September 2021, which is providing £226.5m of recovery funding to the bus sector and helping to maintain bus networks. As agreed with HMT, BRG funding is due to be extended for a period of 6 months from 6 April 2022.
- 7.3 Since the beginning of the pandemic, DfT has asked TCAs to pay concessionary fares funding to bus operators at pre-Covid levels, despite the fall in travel from pass holders, to support the bus sector by providing £12m per week of operator revenue. Asking TCAs to pay concessionary fare funding to bus operators at pre-Covid-19 levels was consistent with the Cabinet Office Notices PPN/02 (<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>) and PPN/04 (<https://www.gov.uk/government/publications/procurement-policy-note-0420-recovery-and-transition-from-covid-19>), however these notices expired on 30th June 2020 and 31st October 2020 respectively.
- 7.4 Before the amendment made by the 2021 Regulations (as referred to in paragraph 6.2 above), regulation 6(a) of the 2011 Regulations stated that operators should be “financially no better and no worse off as a result of providing a concession”.
- 7.5 If TCAs continue to make concessionary fare payments to operators at pre-Covid-19 levels, this arguably leaves operators financially better off as a result of providing the concession.

- 7.6 To remove the impediment on TCAs from continuing to make these payments at pre-Covid-19 levels, the 2021 Regulations suspended the need for TCAs to ensure that operators were no better off under regulation 6(a) of the 2011 Regulations by omitting the words “no better and”. This suspension will end on 5th April 2022, as DfT Ministers had originally anticipated the worst effects of the pandemic would have passed by then.
- 7.7 These Regulations extend the current temporary suspension until the end of the 2022/23 financial year. Following feedback from a concessionary travel consultation, which ran from July-September 2021, it was clear that some form of concessionary payments at pre-Covid-19 levels needed to continue into the 2022/23 financial year, to support both the bus sector and the objectives of the National Bus Strategy, Bus Back Better (<https://www.gov.uk/government/publications/bus-back-better>). In response to stakeholder feedback, Concessionary Travel Recovery Guidance (the ‘Recovery Guidance’) was sent to TCAs and bus operators on 29th October 2021. This Recovery Guidance outlined the concessionary travel recovery strategy, which is intended to be implemented from 6th April 2022 until 5th April 2023. The intention of the recovery strategy is to allow TCAs to gradually transition from paying out concessionary payments at pre-Covid-19 levels back to align with actual patronage levels, without creating a sudden reduction in funding. This is a crucial element of support as this funding forms a significant part of bus operator revenue, and any sudden reduction in concessionary fares funding would have an adverse impact on the sector. If you wish to request a copy of the Recovery Guidance, please email your request to concessionaryfares@dft.gov.uk.
- 7.8 Without this instrument, TCAs have warned that they will not be able to continue to pay concessionary fares funding at pre-Covid-19 levels in 2022/23 or comply with the Recovery Guidance. Unless other funding were diverted, a sudden, widespread reduction in concessionary fares funding would occur, from which it is highly likely that there would be significant short term and potentially long term impacts on service and demand levels and a potential increase in ticket prices which would adversely affect the ambitions of the National Bus Strategy. It would also undermine the substantial emergency funding already provided by the Government, as well as the £3 billion committed by the Prime Minister to achieve the economic and environmental objectives of the National Bus Strategy. Instead, this £3 billion would likely be required to attempt to recover the bus industry to pre-pandemic levels of profitability and long-term demand, rather than its intended transformational purpose.
- 7.9 This instrument aims to extend the solution which addresses the concerns that TCAs have with continuing the current funding arrangements between TCAs and bus operators. Implementation would be highly encouraged by DfT but would be at the discretion of each Travel Concession Authority.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 No consolidation is being undertaken as a result of the changes made by this instrument.

10. Consultation outcome

- 10.1 There has been no formal consultation on this instrument, although there has been wide engagement with the Urban Transport Group, the Association of Transport Coordination Officers, and the Association of Directors of Environment, Economy, Planning & Transport. There has also been engagement with Local Transport Authority Financial Officers, who have expressed concern that by complying with the proposed concessionary travel recovery strategy, they will be at legal risk with continuing to fund bus operators at a higher rate than actual patronage when the effect of the current amendment ceases on 5th April 2022. This concern is due to the unamended wording of regulation 6 of the 2011 Regulations being that it must be an objective of TCAs when formulating reimbursement arrangements to provide that operators are financially no better and no worse off as a result of providing a concession.
- 10.2 However, a private consultation was held between July 2021 and September 2021, which was a call for evidence from bus operators, TCAs and representative bodies, for their views on the proposed concessionary travel recovery strategy, alongside other concessionary travel policy workstreams. Views were taken from 87 stakeholders, with feedback confirming that a clear recovery plan was required to allow for the gradual transition of TCAs reducing their pre-Covid-19 level concessionary payments to align with actual patronage levels, whilst balancing the needs of both bus operators and authorities. The recovery strategy aims to provide TCAs with guidance towards taking an incremental approach to reducing their pre-Covid-19 concessionary payments by 5% every other month, until they are back in line with actual patronage levels, whilst avoiding a sudden widespread reduction in these payments. The recovery strategy will run from 6th April 2022 until 5th April 2023. Although TCA compliance with the strategy is highly encouraged, it is not mandatory. Within this private consultation, TCAs again made it clear that an extension of the current instrument was required to provide them with further legal reassurance to allow them to comply with the recovery strategy.

11. Guidance

- 11.1 The Recovery Guidance has already been sent to TCAs relating to the proposed approach of a steady reduction in pre-Covid-19 concessionary fares funding during the concessionary travel recovery period, which begins on 5th April 2022 and ends on 5th April 2023.

12. Impact

- 12.1 The impact for businesses, in this case bus operators, would be beneficial. This is because it would remove an impediment to them receiving a higher level of concessionary funding than due through actual journeys, to support them in maintaining high service levels. There is no significant impact on charities or voluntary bodies.
- 12.2 The impact on the public sector is intended to be beneficial. Removing an impediment to operators receiving a higher level of funding should help enable them to maintain high and frequent service levels for passengers, crucial in supporting essential services, moving key workers and connecting and strengthening communities.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it is not expected to have a significant impact on the private, public or voluntary sectors.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring this legislation is that DfT will continue to monitor the number of TCAs who maintain pre-Covid-19 concessionary fare payments to bus operators in line with the Recovery Guidance (as referred to in paragraph 7.7). A formal review is not planned because the amendment made by these Regulations only has effect until 5th April 2023.

15. Contact

- 15.1 Rachel Wicks at the Department for Transport Telephone: 07812483691 email: rachel.wicks@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Crane, Deputy Director for Local Transport Bus Recovery & Reform, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.