

# Public Consultation on how EU Regulation 181/2011 concerning the rights of passengers in bus and coach transport will be applied in Great Britain

June 2012

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# Executive summary

## WHAT ARE WE ARE SEEKING VIEWS ON?

The EU Regulation on bus and coach passenger rights will apply in all Member States from 1 March 2013. Whilst “directly applicable” (i.e. it will have automatic and immediate legal force in the UK), we will need to put in place domestic enforcement measures; decide whether to use the available exemptions; and designate terminals served by long-distance services where specific assistance has to be provided to disabled people and people with reduced mobility.

In line with the HMG Code of Practice on Consultation, this public consultation focuses on elements where there is room for stakeholders to influence policy development. The EU Regulation is directly applicable and there is no opportunity for stakeholders to change the provisions of the EU Regulation. Therefore, the consultation just focuses on those aspects where Member States have some flexibility under the EU Regulation.

The key areas covered by this consultation where we are seeking views are:

- a) The use of the exemptions available to Member States under the EU Regulation (Chapter 1);
- b) The enforcement measures needed to ensure compliance with the EU Regulation including the designation of a national enforcement body(ies), designation of body(ies) to which complaints can be made and the penalties applicable for infringements of the EU Regulation (Chapter 2);
- c) The bus and coach terminals to be designated under the EU Regulation at which assistance will be provided to disabled people and people with reduced mobility on long-distance services, subject to certain conditions being met (Chapter 3).

This consultation outlines the proposals in respect of Great Britain as consumer rights are a reserved matter in Scotland and Wales. The devolved administrations in Scotland and Wales are aware of the proposals and have fed into this document and we will continue to work with them when finalising the proposals following consultation.

In Northern Ireland consumer rights is a transferred matter, so separate proposals are being taken forward by the Department for Regional Development in Northern Ireland

## WHO SHOULD READ THIS DOCUMENT?

This public consultation will be of particular interest to:

- a) any body that runs domestic or international regular or occasional bus and coach services
- b) local authorities responsible for the provision of bus services;
- c) managers of bus and coach terminals;
- d) travel agents and tour operators;
- e) passengers of domestic or international bus or coach services;
- f) ticket vendors of bus and coach operators;
- g) passenger rights organisations;
- h) disability rights organisations;
- i) insurance companies; and
- j) anyone else with an interest in the rights of bus and coach passengers.

# How to respond

The consultation period began on (date) and will run until (date). Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at (web address) or you can contact (name) if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

If you have any suggestions of others who may wish to be involved in this process please contact us. (You should offer readers the opportunity to suggest others who may wish to be involved.)

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

# The EU Regulation

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".
2. The EU Regulation on bus and coach passenger rights was published in the Official Journal of the European Union on 28 February 2011 and will apply to the entire United Kingdom from 1 March 2013. 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.
3. The EU Regulation on bus and coach passenger rights includes provisions on:
  - non-discriminatory ticket prices and conditions;
  - compensation and assistance in the event of accidents;
  - rights of disabled people and people with reduced mobility;
  - passenger rights in the event of cancellation or delay;
  - information for passengers and handling of complaints;
  - enforcement and national enforcement bodies.
4. Similar European legislation already applies for transport by air and rail and is due to come into force for maritime transport in December 2012.
5. All provisions of EU Regulation will apply to regular domestic and international passenger services 250km (155 miles) or longer. However, Member States have the ability to make use of a number of exemptions. A limited number of provisions of the EU Regulation will also apply to regular services shorter than 250km, with the exception of disability awareness training for drivers - these are mandatory and cannot be exempted. A very limited number of provisions also apply to occasional services (private hire and tours) and these cannot be exempted.

## Main Provisions of the EU Regulation

6. The following provisions will apply to **all regular services of 250km (155 miles) or longer** (subject to the use of the available exemptions):
  - all passengers to be provided with a ticket, unless other documents give entitlement to travel (article 4(1));
  - passengers to be entitled to compensation in the event of an accident in accordance with national law, but if it is capped minimum amounts apply (article 7);
  - carriers will be required to provide reasonable and proportionate assistance with regard to passengers' immediate practical needs following an accident (article 8);



- if a disabled person or person with reduced mobility holds a reservation or has a ticket and had notified their need for assistance, and has been denied boarding they shall be offered the choice between: reimbursement of the ticket price and where relevant a return service by bus or coach to the first point of departure; and continuation or re-routing by reasonable alternative transport services to the place of destination (article 10(2) to (5));
  - carriers and terminal managing bodies to have in place, where appropriate through their organisations, non-discriminatory access conditions (setting out relevant standards, guidelines and information on the accessibility of buses and or/designated terminals) for the transport of disabled persons and persons with reduced mobility (article 11);
  - disabled people and people with reduced mobility will have the right to specific assistance, free of charge, during their travel on board and at designated staffed terminals. Passengers should notify the need for assistance 36 hours before, and arrive 30 minutes in advance of, departure. Member States are to designate the staffed terminals at which assistance to be provided (articles 12 to 15);
  - disability assistance training for personnel of carriers and designated terminal managing bodies, other than drivers, providing direct assistance to disabled people and people with reduced mobility (article 16(1)(a));
  - where wheelchairs, other mobility equipment has been lost or damaged by a carrier, where necessary, they should provide temporary replacement equipment or devices (article 17(3));
  - where a carrier expects a regular service to be cancelled or delayed in departure from a terminal for more than two hours passengers shall have the choice between: continuation or re-routing to the final destination at no additional cost; or reimbursement of the ticket price and where relevant a return service by bus or coach to the first point of departure. Passengers can claim compensation if the operator fails to offer this choice (article 19);
  - in the event of cancellation or delay in departure of a regular service passengers departing from terminals shall be informed of the situation as soon as possible and no later than 30 minutes after a scheduled departure (article 20);
  - for a journey of a scheduled duration of more than 3 hours the carrier shall in the case of cancellation or delay in departure from a terminal of more than 90 minutes offer the passenger free of charge: snacks, meals or refreshments reasonable in relation to the waiting time, if they are available or can reasonably be supplied; a hotel room or other accommodation in cases where a stay of one or more nights becomes necessary and assistance in arranging transport between the terminal and the hotel (article 21).
7. Meanwhile, there are a limited number of mandatory provisions contained within the EU Regulation that will apply to **all regular bus and coach services in Great Britain:**
- non-discrimination against passengers on the grounds of nationality in terms of the ticket prices and conditions offered (article 4(2));
  - no discrimination on the grounds of disability or reduced mobility with regard to booking a journey or boarding a vehicle (unless safety requirements or vehicle design make access impossible) – articles 9 and 10(1));

- disability awareness training for personnel of carriers and terminal managing bodies who deal directly with the travelling public, although drivers can be exempted for up to 5 years (article 16(1)(b) and (2));
- compensation in respect of damage caused to wheelchairs and other mobility equipment (article 17(1) and (2));
- right to travel information throughout the journey (article 24);
- provision of information on passenger rights under the regulation at designated terminals and where applicable on the internet (article 25);
- carriers to have a complaints handling mechanism (article 26);
- ability for passengers to make a complaint and the timescales attached to the submission of complaints (article 27); and
- the requirement for a national enforcement body (article 28).

The following shows the above information in tabular form:

<b>Article</b>	<b>These will apply to regular bus/coach services of 250km or longer – although they can all be exempted</b>	<b>These will apply to all regular bus/coach services regardless of length – they are mandatory apart from one exception</b>	<b>These will apply to occasional bus/coach services (tours and private hire) - no exemptions</b>
4.1	✓		✓
4.2		✓	✓
7	✓		✓
8	✓		✓
9		✓	
10.1		✓	
10.2 – 10.5	✓		
11	✓		
12 - 15	✓		
16.1 (a)	✓		
16.1 (b) and 16.2		✓ (exemption for drivers)	
17.1 – 17.2		✓	✓
17.3	✓		
19	✓		
20	✓		
21	✓		
24		✓	
25		✓	
26		✓	
27		✓	
28		✓	

# Application of the EU Regulation

## GOVERNMENT'S BETTER REGULATION POLICY

8. The Government has adopted Guiding Principles for EU legislation that it will use when dealing with EU measures. One of these principles is that Ministers must endeavor 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, justified by a cost-benefit analysis and consultation with stakeholders. Therefore, the policy is to make full use of any derogation which would reduce costs to business.
9. In accordance with BIS guidance, the introduction of EU legislation will not be within the scope of the Government's One-In, One Out (OIOO) rule on new UK legislation, apart from: (i) where a department introduces an EU regulation, going beyond the requirements of the Directive, resulting in increased costs to business (gold-plating) or (ii) where a department introduces an EU regulation and fails to take available derogations, leading to increased costs to business.
10. In addition, it is also Government policy that regulation should not impose obligations on small and medium sized enterprises (SMEs) unless a robust and compelling case has been made for including SMEs within the scope of the regulation. Whilst the micro business moratorium does not apply to European legislation, the exemptions provide an opportunity to help deliver this policy.

## DOMESTIC MEASURES

11. As set out earlier, whilst the EU Regulation will be directly applicable it allows Member States to make use of a number of time-limited exemptions in respect of domestic regular services and regular services with one or more stops outside of the EU. Member States may also permanently disapply certain aspects of the EU Regulation relating to disabled people and people with reduced mobility if equivalent rights are provided under national rules. The EU Regulation also requires Member States to put in place enforcement measures.
12. Details of any applied exemptions and the required enforcement measures will both need to be set out in domestic legislation. In addition, changes will need to be made to the Equality Act 2010 to make clear that it does not cut across anything governed by the EU Regulation, so that the EU Regulation stands alone.
13. The following chapters seek views on the use of the exemptions and the enforcement measures, as well as on the terminals to be designated as ones where assistance is required under the EU Regulation when certain conditions are met.

## Chapter 1 – Exemptions

- Exemptions available under this EU Regulation
- Who will be affected by these exemptions?
- What is the Government's favoured approach?
- Impact Assessment

### Exemptions available under this EU Regulation

1.1 This consultation seeks views on the possible use of each of the available exemptions, contained within the EU Regulation:

- With the exception of certain mandatory provisions in the EU Regulation, 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, which may be renewed once (article 2(4));
- 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 2(5));
- 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 (article 16(2));
- Member States may exempt domestic regular services from the application of all or some of the provisions of the chapter on disabled persons and persons with reduced mobility, provided that they ensure that the level of protection of disabled persons and persons with reduced mobility under their national rules is at least the same as under the Regulation (article 18).

### Who will be affected by these exemptions?

1.2 The main groups and sectors affected by applying these exemptions would be:

- Bus and coach passengers travelling on long-distance regular services (250 km/155 miles or longer), including disabled passengers and those with reduced mobility. Currently there are over 200,000 regular services a year that travel 250km (155 miles) or longer, with approximately 4.7m passengers travelling on these services (based on figures supplied by the Confederation of Passenger Transport). We have been unable to obtain specific figures on the number of journeys made by disabled people or people with reduced mobility on long-distance services. Based on DfT Statistics in relation to local bus services 34% of all bus passenger journeys in England were made by concessionary pass holders, so there could be in the region of 1.6m

passengers travelling on long-distance services, although this is likely to be a high estimate as passes will be issued to people over 60 rather than disabled people and a large number of people over 60 will not class themselves as having reduced mobility.

- Bus and coach operators running long-distance regular services, travel agents and tour operators and managing bodies of designated terminals (final number of termini to be determined after consultation), some of which will be small/medium sized enterprises. In some cases terminal managing bodies will be local authorities rather than operators. Based on returns to the DfT's Public Service Vehicle survey, some 40 operators currently provide scheduled coach services. However, as operator's of coach services are not required to register their routes it has not been possible to get a robust figure on the number of operators running services over 250km (155 miles). We are currently aware of at least 9 operators that run such services, although we plan to use this consultation to gain a more precise figure.

**Q1:** Are you aware of any alternative sources of information on the number of disabled passengers and persons with reduced mobility that travel on regular services 250km (155 miles) or longer?

**Q2:** Do you (as a carrier) currently operate regular bus/coach services of 250km (155 miles) or longer or (as a passenger) are you aware of carriers in Great Britain that run such services?

### What is the Government's favoured approach?

- 1.3 While the Government accepts that there is an argument for the EU to intervene in respect of international services, the justification for such intervention in domestic services is not as clear cut, particularly with regard to local bus services. Given the Government's position on dealing with EU measures and wider better regulation agenda the Government's preferred approach would be to make use of all available exemptions in order to delay costs to industry and give them more time to prepare.

***Exemption A - Member States may exempt domestic regular services from the application of this Regulation for 4 years, which may be renewed once. (article 2(4))***

- 1.4 Applying this exemption would provide significant monetised benefits (estimated at £8.2m over a ten year period) to bus and coach operators and terminal managing bodies (including some SMEs). Therefore, the Government is proposing to apply this exemption in full. There will be costs to passengers, including disabled people and people with reduced mobility, as they will not benefit from all of the guaranteed rights under the EU Regulation until 2017 (or 2021 if the 4 year exemption is renewed). However, these costs will be mitigated by the requirements of existing domestic Equality and Contract law and by the fact that most major long-distance operators already provide a similar

quality of service to that required by the EU Regulation. The monetised costs to passengers have been estimated at £1.3m over a ten year period. It is likely that operators would fully align their practices with the EU Regulation as the exemptions come towards their completion. Whilst our preferred option is to use the exemptions on a blanket basis, we believe it could be used to exempt specific articles if so desired.

The impact assessment at Annex X provides a detailed analysis of the costs and benefits. A summary of the existing legislation and industry quality standards affecting key chapters of the EU Regulation is provided below:

- 1.5 *Compensation and assistance in the event of accidents:* Passengers are entitled to compensation in the event of an accident in accordance with national law, but if it is capped minimum limits apply (article 7). There is currently no national law specifying a limit on liability for death or personal injury or damage to luggage so there would be no change. The Confederation of Passenger Transport (CPT) confirmed that it is standard practice amongst long-distance bus and coach operators to ensure that all passengers needs immediately following an accident (as covered by article 8) are dealt with.
- 1.6 *Rights of disabled people and people with reduced mobility:* Under the Equality Act 2010, it is unlawful for bus and coach operators to discriminate against, harass, or victimise disabled people who require their services (similar to some of the requirements of articles 9 and 10). This includes a requirement on operators to make reasonable adjustments where a disabled person is put at a substantial disadvantage when trying to access their services. Operators are never required to remove, or make alterations to, the physical features of the bus or coach (same as article 2(7)).
- 1.7 The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (as amended) place obligations on drivers of regulated buses (those first used on or after 31 December 2000). This includes taking all reasonable precautions to ensure the safety of passengers who are on, or who are entering or leaving the vehicle. At the request of the passenger, drivers are also required to provide assistance to wheelchair users and other disabled persons to board or alight the vehicle (similar to some aspects of articles 12 to 14).
- 1.8 By 9 September 2013, all bus drivers will have to have completed 35 hours of periodic training and it will be unlawful to drive professionally without completing this (as required by the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (SI 2007/605) – which implement European Directive 2003/59). Whilst disability awareness training (article 16) does not have to be included in the periodic training, this is standard practice as bus driving is a customer facing role.
- 1.9 In addition, the provision of information setting out access to services (article 11) and the provision of disability related training for people involved in providing the service to disabled people (article 16) might be seen as

reasonable adjustments under the Equality Act 2010 but this would depend on the circumstances of the case.

- 1.10 In line with these domestic requirements, one of the main operators of long-distance services, National Express, has established a code of practice for disabled passenger designed to ensure that their disabled customers are offered a common high standard of service. This code sets out a number of commitments to disabled customers, including: a disabled traveller helpline, priority seats, assistance with luggage, customer service at terminals from disability awareness trained staff, carriage of assistance dogs, storage of wheelchairs/small mobility scooters and suitable methods of providing information to those passengers with hearing/sight problems.
- 1.11 *Passenger rights in the event of delay and cancellation:* It is our understanding from discussions with CPT that most long-distance bus/coach operators already offer free continuation to the final destination/re-imburement when a journey is subject to significant delay. For example, National Express Coach offers refunds for delay or cancellation of services. We would expect bus and coach operators to keep passengers informed of delays as a matter of course. The CPT have advised that delays leading to requirements for overnight stays are rare and operators would provide overnight accommodation if necessary.

**Q3.** Do you agree with the proposed approach to apply this exemption in full for 4 years? If not, please state your specific objection(s). Should only some of the Articles be excluded from the exemption? If so which ones and why?

***Exemption B - Member States may exempt from the application of the Regulation particular regular services where a significant part of the service, including at least one scheduled stop, is operated outside of the EU (article 2(5)).***

- 1.12 The Department is not aware of any services that currently fall under this category. However, if any services are identified as a result of this consultation in order to ensure consistency with domestic regular services, the Department is proposing to apply this exemption in full.

**Q4.** Are you aware of any GB bus/coach services over 250km (155 miles) in length that include at least one scheduled stop outside the EU?

**Q5.** Do you agree with the proposed approach to apply this exemption in full for 4 years? If not, what specific objection(s) do you have to the application of this exemption?

***Exemption C - 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 (article 16(2)).***

- 1.13 This exemption for up to 5 years is only available to bus and coach drivers.

- 1.14 Currently, as a requirement of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (SI 2007/605) – which implement European Directive 2003/59, all professional bus and coach drivers need to hold a Certificate of Professional Competence (CPC). Drivers must undertake 35 hours of periodic training every 5 years. Whilst there is no mandatory requirement for the periodic training to include disability awareness training, we understand that this is standard practice given the customer facing nature of driving a bus.
- 1.15 The Confederation of Passenger Transport (CPT) has estimated that across the whole bus and coach industry, approx 75% of drivers have already completed disability awareness training as part of their CPC training requirement and this figure continues to rise each year. By 9 September 2013 all bus drivers will have to have completed 35 hours of periodic training and it will be unlawful to drive professionally without completing this.
- 1.16 GoSkills, with input from the Confederation of Passenger Transport, has developed materials to support operators and training providers who wish to deliver Periodic Training courses that focus on disability awareness and on improving access and customer service for passengers with disabilities. The course had been developed to reflect the content and best practice set out in the Disability Equality and Awareness Training Framework for Transport Staff developed by the Disabled Persons Transport Advisory Committee (DPTAC). The CPT is encouraging its members to meet the CPC training requirements including the uptake of disability awareness training.
- 1.17 On the basis that applying this exemption would provide more time for remaining drivers to undergo the necessary training, which is likely to be of benefit to smaller businesses, the DfT is proposing to apply this exemption. However, DfT would encourage operators to ensure their drivers undertake disability awareness training and would reconsider the use of this exemption a year after the Regulation applies (March 2014).

**Q6.** Do you agree with DfT's proposed approach to apply this exemption for 5 years, with a review after the first year? If not, what specific objection(s) do you have to the application of this exemption?

***Exemption D - Member States may exempt domestic regular services from the application of all or some of the provisions of the chapter on disabled persons and persons with reduced mobility, provided that they ensure that the level of protection of disabled persons and person with reduced mobility under their national rules is at least the same as under the Regulation (article 18).***

- 1.18 Member States can permanently exempt domestic regular services from the majority of Chapter III on the 'Rights of disabled persons and persons with restricted mobility' where their national rules provide the same or better level of protection.



1.19 Existing domestic legislation does provide a similar level of protection for some disabled people (as set out in paragraph x), but it does not extend to all people with reduced mobility. The EU Regulation also sets specific requirements, whilst some domestic legislation is more generic. For example, the Equality Act 2010 is based on service providers making reasonable adjustments which will depend on the circumstances of the case. As it cannot always be guaranteed that the level of protection will be the same as under the EU Regulation, DfT does not believe we can make use of this exemption.

**Q7.** Do you agree with the Government's view that we are unable to make use of this exemption? If not, how do you think its use could be justified?

### Impact Assessment

1.20 A consultation stage impact assessment is attached at Annex X. This sets out the costs and benefits of applying various exemptions referred to above.

1.21 If you believe that you are in possession of any relevant information or evidence that would help to inform the final Impact Assessment (post consultation), please provide a response to the question below.

**Q8.** Is there any further evidence or information (particularly in terms of monetised costs/benefits) that you think should be taken into account when drafting the Department's final Impact Assessment?

## Chapter 2 – Enforcement measures

- Requirements under the EU Regulation
- Current arrangements in GB on PSV Enforcement/Complaints
- What is the Government's favoured approach?

### Requirements under the EU Regulation

2.1 In summary, article 28 of the EU Regulation provides that:

- Each Member State shall designate a new or existing body or bodies responsible for the enforcement of the Regulation as regards regular services.
- Each enforcement body shall take the measures necessary to ensure compliance with the Regulation.
- Each body shall, in its organisation, funding decisions, legal structure and decision making, be independent of carriers, tour operators and terminal managing bodies.
- Any passenger may submit a complaint to the appropriate body designated as the enforcement body, or to any other appropriate body designated by a Member State, about an alleged infringement of the Regulation.
- Member States may decide that the passenger as a first step shall submit a complaint to the carrier in which case the national enforcement body or any other appropriate body designated by the Member State shall act as an appeal body for complaints not resolved through the carrier's complaint handling mechanism.

In addition, article 31 requires that:

- 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.

### Current arrangements in Great Britain on PSV Enforcement/Complaints

#### Enforcement

2.2 Independently appointed Traffic Commissioners (TCs) are responsible for regulating the system of public service vehicle (PSV) operator licensing and local bus service registration. TCs are statutorily independent in all their functions. Akin to a transport-specific magistrate, they have a quasi-judicial role in determining licence applications and in taking disciplinary action against operators who fall foul of relevant legislative requirements. When necessary, they may hold Public Inquiries (PIs) to consider the possibility of disciplinary action against PSV operators and drivers.

2.3 Traffic Commissioner work affecting the PSV Industry falls into 4 main areas:

- licensing operators of buses and coaches under the O licensing regime and issuing exemptions from the O licensing regime in the form of permits to not-for-profit organisations running community transport services;
- registering local bus services and holding operators and local authorities to account for their roles in the delivery of punctual services;
- regulating the conduct of vocational driver licence holders; and
- consideration of applications for the release of impounded vehicles.

2.4 Traffic Commissioners do not currently have any powers in respect of passenger rights.

2.5 There are seven TCs for the whole of Great Britain, who are appointed by the Secretary of State for Transport. One of the TCs deals specifically with Scotland while another has a joint role serving both Wales and the West Midlands.

2.6 Appeals against decisions of Traffic Commissioners are decided by the Administrative Appeals Chamber of the Upper Tribunal. PSV operators may appeal to the Upper Tribunal against any decision the Traffic Commissioner has made about their operator licence. The Tribunal is an independent judicial body, set up to hear and decide appeals against decisions of Traffic Commissioners; amongst others.

2.7 Enforcement is carried out by the Vehicle and Operator Services Agency (VOSA). VOSA carry out compliance checks on operators' maintenance arrangements, the condition of vehicles (issuing prohibition notices where appropriate) and other matters such as drivers' hours compliance. VOSA staff also process licence and bus registration applications under delegated authority. The evidence of non-compliance on which the TC cases against operators are based is primarily provided by VOSA.

2.8 Traffic Commissioners are independent of DfT and VOSA.

### Complaints

2.9 In Great Britain, complaints are directed to and dealt with by individual operators in the first instance. Following this, if a passenger remains dissatisfied they may choose to follow-up their complaint with the following bodies, depending on their location.

2.10 For England (outside London) and Wales if a passenger is unhappy with the response they have received from the operator, they can take the matter further with the independent Bus Appeals Body (BAB). The BAB is a non-statutory committee offering independent review of complaints arising from the operation of local bus and scheduled coach services. The BAB was established in 1998 as a joint initiative between the Confederation of Passenger Transport (CPT - the trade association for the bus and coach industry) and Bus Users UK (BUUK - a passenger representative body).

- 2.11 Complaints to be dealt with by the BAB are initially sent to BUUK. In the first instance, BUUK will review the complaint to try and resolve the issue. If they cannot resolve it, they refer it to the BAB. The BAB consists of three people: a representative nominated by BUUK, a representative nominated by CPT and an independent chairman. The industry provides funding to BUUK to enable it to carry out this work whilst CPT funds the administrative support for its part in handling BAB work. However, the BAB remains independent in its decision making and funding decisions. The Bus Appeals Body has no power to require companies to abide by its decisions, but Members of the CPT are required to do so as a term of their Membership.
- 2.12 For passengers in London and Scotland, there are currently statutory complaints bodies who deal with complaints about bus services in each area: London TravelWatch (London Transport Users Committee) and the Bus Passengers' Platform (Scotland). They follow a similar procedure to Bus Users UK and the Bus Appeals Body, where they try to resolve disputes between the operator and passenger. Similar to the BAB their decisions are not legally binding.

## What is the Government's favoured approach?

### Enforcement Body for Bus/Coach Operators

- 2.13 The Department's position is to look to use existing bodies, provided that they can satisfy the independence requirements in article 28. The Department is therefore proposing that the Traffic Commissioners will be designated as the national enforcement body under article 28(1) for GB in respect of bus/coach operators, responsible for the enforcement of the EU Regulation in respect of regular services. However, we are not proposing that passengers would be able to submit complaints to the Traffic Commissioners under article 28(3). Instead, the Department would designate the existing complaints handling bodies in England, Scotland, Wales and London (see paragraphs 2.31-2.32).
- 2.14 Although a majority of the EU Regulation applies only to long-distance operators (those with services of 250km (155 miles) or more), all operators will have to comply with a limited number of provisions. As the Government is proposing to make use of the four year exemption for domestic services, initially enforcement would be in respect of the mandatory provisions and in relation to international services.
- 2.15 Traffic Commissioners would rely on evidence provided by the relevant complaints handling body that a company had breached the EU Regulation. If there was clear evidence of an infringement relating to the EU Regulation, Traffic Commissioners would consider appropriate enforcement action against the operator.
- 2.16 Having received the necessary information from a complaints handling body, we propose that Traffic Commissioners would initially ask the operator for evidence as to how they had or are complying with the particular aspect(s) of the EU Regulation. If a satisfactory response was not received within as

specified period of time (28 days), the Traffic Commissioner might consider issuing an improvement notice to the operator outlining the measures that need to be put in place to ensure compliance. If this approach does not rectify the situation, we propose that Traffic Commissioners would have the power to impose penalties or consider attaching conditions to an operator's licence. As under existing legislation a public inquiry would be held before any conditions were attached to licences or penalties imposed.

- 2.17 In terms of the penalties that could be imposed, we are proposing to use a similar approach to that under section 155 of the Transport Act 2000, whereby the penalty will be such amount as the 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 under all the PSV operator's licences held by him. Alternatively, separate levels could be set for breaches of the various articles, for example a £1,000 penalty could be levied for a failure to provide reasonable and proportionate assistance with regards to a passenger's immediate needs following an accident. If this latter approach was adopted we would propose a maximum penalty level of £5,000 for a breach of an article (similar to that for criminal fines).
- 2.18 We are not proposing to give any enforcement powers to VOSA. The majority of its work is focused on the roadside and the issuing of fixed penalties and we do not feel that the obligations of the EU Regulation lend itself to this type of enforcement. We believe the TCs are better placed to deal with alleged infringements.
- 2.19 The Government is committed to preventing an unnecessary proliferation of new criminal offences and so alternatives must be considered, including whether civil sanctions may be more appropriate. The Department believes that the civil sanctions outlined above will be effective, proportionate and dissuasive and therefore we are not proposing to introduce criminal offences for breaches of the EU Regulation.

**Q9.** Do you agree with the Government's proposed approach to make Traffic Commissioners the designated enforcement body for the EU Regulation in respect of bus/coach operators? If not, what specific objection(s) do you have and who do you think should have this role?

**Q10.** The Government is not proposing to make any breaches of the EU Regulation a criminal offence, as we do not believe it would be proportionate. Do you agree? If not, please outline your reasons?

**Q11.** The Government proposes giving Traffic Commissioners powers to issue improvement notices requiring operators to put in place procedures to comply with the EU Regulation and the ability to impose financial penalties and/or attach licence conditions if deemed appropriate. Do you agree with this approach? If not, please state whether there are any options you deem more suitable?

**Q12.** With regards to the penalties that could be imposed the Government proposes that these should reflect the existing system set out in section 155 of the Transport Act 2000 where the Traffic Commissioner has discretion but the penalty must not

exceed £550 multiplied by the total number of vehicles the operator is licensed to use. Do you agree with this approach? If not, do you prefer the option of having specific penalty levels for breaches of the various articles or another approach?

**Q13.** If you agree that the Traffic Commissioners should have discretion, do you think that £550 multiplied by the total number of vehicles which the operator is licensed to use under all the PSV operator's licences held by him is appropriate? If not, what level would you propose, please outline your reasons why?

**Q14.** If you prefer specific penalty levels being set for breaches of the various articles, do you think a standard level of penalty per article should be set or that the penalty level should reflect the seriousness of the article breached?

**Q14a.** If you think a standard penalty level should be set per article do you agree that £1,000 is appropriate? If not, what level should be set, please give your reasons for this?

**Q14b.** If you think the penalty level should be determined by the seriousness of the article breached, what do you think the respective levels should be and the reasons for these?

**Q15.** If you prefer specific penalty levels being set for breaches of the various articles (rather than the Traffic Commissioner having discretion), do you agree with our proposal for the maximum penalty level to be £5,000 (similar to that for criminal fines)? If not, what level should it be, please explain your reasons for this?

#### Enforcement body for terminal managing bodies

- 2.20 Terminal managing bodies are defined in the EU Regulation as “an organisational entity in a Member State responsible for the management of a designated terminal”. Therefore the requirements that fall on terminal managing bodies in articles 11; 13; 14; 16; 17; 20; 24; and 25 will only apply to those designated under the EU Regulation and not all terminals. The terminals to be designated under the EU Regulation are likely to either be owned by an operator or a local transport authority.
- 2.21 Where the terminals are owned by a bus/coach operator, we are proposing the same approach to enforcement as that in respect of the other articles that apply specifically to operators (see ‘Enforcement Body for Bus/Coach Operators’ above), with the exception of the ability to impose conditions on an operator's licence.
- 2.22 Where terminal managing bodies are local transport authorities, there is no existing enforcement body. However, Traffic Commissioners do have some powers over local traffic authorities in respect of the poor punctuality of local bus services.
- 2.23 The Government's localism agenda places the focus on local people holding locally elected Councils to account. However, we do not believe it is possible to rely on this as an appropriate enforcement mechanism under the EU Regulation. Therefore, one option would be to give Traffic Commissioners

additional powers in respect of terminal managing bodies who are local transport authorities. Whilst we do not think it would be appropriate to enable Traffic Commissioners to impose financial penalties on local authorities, we are proposing to give the Traffic Commissioners powers to enable them to issue an improvement notice to the local transport authority and the ability to require a local authority to attend a public inquiry into the need for an improvement notice, if deemed appropriate. Powers already exist under Section 250 of the Local Government Act 1972 in relation to a local authority's attendance at an inquiry and these would be extended to alleged breaches under the EU Regulation. As with the enforcement of terminals owned by bus/coach operators, we would expect the Traffic Commissioners to try and resolve the issue informally before starting formal action.

### Enforcement Body for Tour Operators and Travel Agents

- 2.24 A tour operator is defined in the EU Regulation as an organiser or retailer, other than the carrier (within the meaning of Article 29(2) and (3) of Directive 90/314/EEC on package travel, package holidays and package tours). A travel agent is defined as any intermediary acting on behalf of a passenger for the conclusion of transport contracts. The few requirements that apply to tour operators and travel agents are in chapter 3 on the rights of disabled persons and persons with reduced mobility. Other than the requirements preventing discrimination on the grounds of disability or reduced mobility (articles 9, 10(1)+(2)+(4)+(5)) the other requirements relate to tour operators making the carriers or terminal managing bodies 'access conditions' available (article 11) and tour operators and travel agents ensuring that a person's notification of the need for assistance is notified to carriers and terminal managing bodies (articles 14 and 15).
- 2.25 From discussions with the CPT our understanding is that Travel Agents and Tour Operators act as sales agents for the carriers. Therefore, neither of these types of body has any input regarding the drafting or amending of the terms/conditions of a travel contract, as these are always laid down by the bus/coach operator. Agreements between carriers and travel agents and tour operators are always written and will include a number of back office provisions such as when the money is passed on.
- 2.26 There are a number of trade associations that represent tour operators and travel agents in Great Britain such as ABTA (the Association of British Travel Agents), AITO (the Association of Independent tour operators) and the TTA (Travel Trust Association), all of which offer complaints handling services to consumers who travel with their members. Whilst they all fulfil the role of a complaints body, they do not have any enforcement powers against their members and are therefore unsuitable as an enforcement body.
- 2.27 Given tour operators and travel agents lack of influence over the conditions of travel, it is the Department's view that enforcement against tour operators and travel agents on the limited number of provisions that apply to them does not warrant the creation of a new enforcement body. Traffic Commissioners do

not currently have any powers in respect of tour operators and travel agents and, given their detachment from these organisations and their industry, we do not think it is appropriate for Traffic Commissioners to have their powers extended to enforce against either of these bodies.

- 2.28 However, enforcement action can be taken against tour operators (though not against travel agents) under the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288). Under these Regulations, every local weights and measures authority in Great Britain is a nominated enforcement body. Where particular requirements of those 1992 Regulations are breached, a conviction can lead to a fine for the tour operator.
- 2.29 As far as the Department is aware, the enforcement role of weights and measures authorities (under the Package Travel, Package Holidays and Package Tours Regulations 1992) works well. We therefore propose that local weights and measures authorities should take an enforcement role in relation to ensuring that Tour Operators and Travel Agents meet their obligations under the EU Regulation. Given the Government's policy on considering alternatives to criminal penalties we are not proposing to introduce any new criminal sanctions against travel agents or tour operators, but are proposing the introduction of a civil financial penalty system. If such a civil penalty was issued, it would be enforceable against the travel agent or tour operator concerned as a civil debt (e.g. in a county court in England and Wales).
- 2.30 Passengers would also be able to take direct action through the courts where they feel that one of either type of organisations is in breach of the EU Regulation.

**Q16.** In relation to tour operators and travel agents, do you agree that local weights and measures authorities in GB should enforce this regulation against both tour operators and travel agents, ultimately by means of a civil penalty? If not, who do you think should take enforcement action in relation to the limited provisions that apply to tour operators and travel agents, and how should they do that?

Appropriate Body(ies) to deal with complaints (article 28(3))

- 2.31 For complaints, we propose to maintain the current position (as allowed by the EU Regulation) where passengers submit complaints to the carrier or terminal managing body in the first instance, rather than through the national enforcement body. Where these complaints cannot be resolved, they would be referred to the designated Complaints body. We propose to designate appropriate bodies for England and Wales, Scotland and London to deal with complaints and appeals.
- 2.32 DfT proposes to appoint the Bus Appeals Body (BAB) as the designated appeals body, for England (outside of London) and Wales. In London, we propose to designate the current statutory appeals body, London Travelwatch, with the existing Bus Passengers' Platform performing the role in Scotland.



- 2.33 We would expect the relevant appeals body to try to facilitate a resolution to the complaint between the passenger and the carrier. Where this is not successful, nothing shall preclude passengers from seeking damages in accordance with national law before national courts in respect of provisions within the EU Regulation.
- 2.34 Where any relevant appeals body has evidence that an operator is consistently not complying with the provisions of the EU Regulation, we propose that the evidence would be referred to the enforcement body for action.

**Q17.** Do you agree with the Government's proposed approach to make the Bus Appeals Body, London Travelwatch and the Bus Passengers' Platform the designated complaints bodies for the EU Regulation? If not, what specific objection(s) do you have to the designations?

## Chapter 3 – Designated Terminals

- Requirements under the EU Regulation
- View of DfT

### Requirements under the EU Regulation

- 3.1 The EU Regulation requires that each Member State shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility travelling on regular services 250km (155 miles) or longer shall be provided. Subject to the carriers and/or terminal managing bodies access conditions, they shall, within their respective areas of competence, provide at ‘designated terminals’ certain assistance free of charge to disabled persons and persons with reduced mobility. Access conditions are defined as the relevant standards, guidelines and information on the accessibility of buses and/or designated terminals including their facilities for disabled persons or persons with reduced mobility.
- 3.2 Carriers and terminal managing bodies are only required to provide such assistance on the condition that the persons need for assistance is notified at the latest 36 hours before assistance is needed. If no notification is made, every reasonable effort should be taken to ensure that assistance is provided in a way to enable the passenger to board the departing service, to change to the corresponding service or alight from the arriving service for which they have purchased a ticket.
- 3.3 The EU Regulation defines a ‘terminal’ as a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office. In addition, Annex 1 of the EU Regulation sets out the specified assistance to be provided also refers to the terminal having check-in-counter, waiting room and embarkation area. Nothing in the EU Regulation introduces new technical requirements for buses or coaches or for infrastructure and equipment at terminals. It is about giving rights to passengers.

### View of DfT

- 3.4 Whilst the EU Regulation defines a ‘terminal’, it does not state that every ‘terminal’ that meets this definition should be a designated terminal under Article 12. It falls to each Member State to decide on how many terminals they designate and the criteria for how these are chosen. In the Department’s view, the EU Regulation requires assistance to be provided whenever services are running, provide that 36 hours notice is provided. Article 5 of the EU Regulation enables a terminal managing body to entrust the performance of obligations to other parties. Therefore, outside of office hours when the terminal is not staffed it would be possible for the terminal managing body to agree with the coach operator running the service that the carrier would

provide the assistance on the terminal managing bodies behalf, although the terminal managing body would nevertheless be liable for the acts and omissions of the carrier.

- 3.5 As the EU Regulation does not require Member States to designate all terminals that are used by services 250km (155 miles) or longer that meet the definition of 'terminal', the Department does not intend to adopt this approach. Instead, we are proposing to only designate those terminals that meet certain criteria. This approach aims to be proportionate to smaller terminals where staff are not available at all times and which are often owned by local authorities.
- 3.6 One option is to decide whether a terminal should be designated based on the number of services 250km (155 miles) or longer that serve the terminal. According to the CPT there are over 200,000 regular services a year that are 250km (155 miles) or longer. A terminal would be designated where it is served by at least 50,000 long-distance services a year (25% of services). In addition, as we are proposing to make use of the 4 year exemption for domestic services, initially for the duration of the exemption, only those terminals that met the criteria and are served by regular long-distance international services 250km (155 miles) or longer would be designated.
- 3.7 Given that most bus or coach terminals in GB will not have a check-in counter, the Department's view is that those terminals that could be designated would be staffed terminals with a waiting room or ticket office selling tickets for services of 250km (155 miles) or longer, both of which would be situated within the terminal building. The Department does not believe that terminals or stops consisting solely of bus stands without a main terminal building would be suitable to be classed as a designated terminal.
- 3.8 We believe that on this basis, London Victoria and Birmingham coach terminals would meet the two criteria but there may be others. The Department would be reliant on the owners of terminals to provide information on the number of long-distance services serving the terminal as there is no central database. We have discounted using passenger throughput as a criteria it is unlikely to recognise the difference between those travelling on long-distance services and those on shorter services.
- 3.9 Any bus or coach terminal not assigned as a designated terminal would continue to be subject to the requirements of the Equality Act 2010 where a service provider is required to make reasonable adjustments to enable a disabled person to access the service. So terminals would be required to do what is reasonable in all the circumstances of the case to avoid a disabled person being put at a substantial disadvantage compared to non-disabled people in accessing this service.

**Q18.** Do you agree with the Government's proposed criteria for assigning designated terminals? If not, what alternative approach would you suggest?

# Glossary of Terms

For the purposes of this Public Consultation and references to the EU Regulation itself, you may find the following definitions useful:

**Access conditions** - relevant standards, guidelines and information on the accessibility of buses and/or of designated terminals including their facilities for disabled persons or persons with reduced mobility;

**Bus Appeals Body** – Independent appeals body launched in May 1998 as a joint initiative by the Confederation of Passenger Transport UK (CPT) and Bus Users UK responsible for reviewing passengers' complaints and representations where these have not been settled with operators.

**Bus Passengers' Platform** - An independent body set up by the Scottish Government to deal effectively with passengers' complaints where these have not been settled with operators.

**Bus stop** - any point other than a terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight;

**Bus (or coach) terminal** - a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office;

**Bus Users UK** - Formerly the National Federation of Bus Users, Bus Users UK represent bus passengers. They aim to help communication between bus users and the people that provide their bus service. They organise Bus Users' Surgeries around the country, set up local groups of bus users and campaign on behalf of bus passengers.

**Carrier** - a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by regular or occasional services to the general public;

**Confederation of Passenger Transport (CPT)** - the government-recognised trade association for the bus, coach and light rail industries.

**Disabled person or person with reduced mobility** - any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers;

**Local Transport Authority** – Relevant local government authorities responsible for public transport within their area. County councils and unitary authorities are

transport authorities. In metropolitan areas, passenger transport executives are the transport authorities and in London, it's Transport for London.

**London Travelwatch** - Independent, statutory watchdog for transport users in and around London, dealing with passengers' complaints where these have not been settled with operators.

**Occasional services** - services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself;

**Regular services** - services which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;

**Terminal managing body** - an organisational entity in a Member State responsible for the management of a designated terminal;

**Tour operator** - an organiser or retailer, other than the carrier, who organises packages and sells or offers them for sale, whether directly or through a retailer;

**Travel agent** - any intermediary acting on behalf of a passenger for the conclusion of transport contracts;

# What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on ([www.dft.gov.uk](http://www.dft.gov.uk)).

Paper copies will be available on request.

If you still have questions on any aspect of this consultation, please contact:

Ben Jones  
Department for Transport  
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# Annex X Impact assessment

# Annex Y Consultation criteria

The consultation is being conducted in line with the Government's Code of Practice on Consultation. The criteria are listed below. A full version of the Code of Practice on Consultation is available on the Better Regulation Executive website at <http://www.bis.gov.uk/files/file47158.pdf> If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

Consultation Co-ordinator  
Department for Transport  
Zone 2/25 Great Minster House  
London SW1P 4DR  
Email [consultation@dft.gsi.gov.uk](mailto:consultation@dft.gsi.gov.uk)

## Criterion 1 When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

## Criterion 2 Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

## Criterion 3 Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

## Criterion 4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.



## Criterion 5 The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

## Criterion 6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

## Criterion 7 Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.