EXPLANATORY MEMORANDUM TO

THE MANDATORY TRAVEL CONCESSION (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 205

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 suspends the requirement for Travel Concession Authorities ('TCAs') to ensure that reimbursement arrangements in respect of concessionary fares do not result in the bus operator being better off. The requirement has been suspended as a consequence of the Covid-19 pandemic.

2.2 The England National Concessionary Travel Scheme 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 This suspension will end on 5th April 2022, at the end of 2021/22 financial year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 No. 1121 (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. These Regulations remove 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.

6.3 This removal of this requirement has effect until the end of 5th April 2022 so that after that date the requirement will be reinstated.

7. Policy background

What is being done and why?

7.1 Concessionary fares funding forms a significant revenue stream for bus operators and is administered by TCAs. TCAs are legally required to reimburse bus operators for carrying concessionary passengers. This funding is normally used to ensure that people who have reached the State Pension Age, people with eligible disabilities and any additional discretionary, locally funded, concessionary passengers can travel at no cost on public bus services by reimbursing bus operators whenever they travel on their services.

7.2 The Covid-19 Bus Services Support Grant, the primary funding package agreed between Her Majesty's Treasury (HMT) and DfT to support the bus industry assumes that local government concessionary fare funding to operators continues at pre-Covid levels. While DfT provides up to £32.5m per week in direct emergency support to bus operators through the emergency bus support package to make up for lost revenue, concessionary fares funding from TCAs provides another £12m per week, to allow bus services to continue running. TCAs, in turn, receive allowance for this funding from Ministry for Housing, Communities and Local Government as part of their Revenue Support Grant, which is allocated by HMT through a formula to support a wide range of different activities.

7.3 Since the beginning of the pandemic, DfT has asked local authorities designated as TCAs, to pay concessionary fare funding to bus operators at pre-Covid-19 levels, despite the fall in travel from pass holders.

7.4 Currently, regulation 6(a) of the 2011 Regulations states 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 levels this arguably leaves operators financially better off as a direct result of providing the concession, although in practice the combination of different local and national funding packages work together to ensure that the overall outcome for operators in receipt of government funding is that they break-even.

7.6 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://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874178/PPN_02_20_Supplier_Relief_due_to_Covid19.pdf) and PPN/04 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891154/PPN_04_20-_Recovery_and_Transition_from_COVID-19.pdf) but these notices are no longer in force. This instrument, therefore, amends regulation 6(a) of the 2011 Regulations by temporarily omitting the words "no better and" and therefore removing from regulation 6(a) the requirement that reimbursement arrangements in respect of concessionary fares do not result in the bus operator being better off. This amendment will cease to have effect at the end of 2021/22 financial

year, when the Department hopes the worst effects of the pandemic will have passed, such that at that time the requirement will be reinstated.

7.7 Without this instrument, many TCAs have warned that they will not be able to continue to pay concessionary fares funding at pre-Covid-19 levels and as a result, DfT will need to increase its emergency bus package funding in order to maintain bus services which provide vital transport links for key workers and passengers without access to private cars. This instrument aims to address a concern that TCAs have with continuing the current funding arrangements between them and bus operators. Implementation would be at the discretion of each TCA.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 we have engaged widely with Urban Transport Group, Association of Transport Coordination Officers, and the Association of Directors of Environment, Economy, Planning & Transport and advice has been taken from 16 representatives from the TCAs, and in particular from the Financial Officers, that they have a concern with continuing the funding given the current wording of the 2011 Regulations.

11. Guidance

11.1 Guidance has already been sent to TCAs relating to concessionary fares funding during the Covid-19 pandemic and during the period of disruption associated with Coronavirus.

11.2 There is no need to update guidance on this instrument, although TCA representatives will be notified regarding this change, and encouraged to continue pre-Covid-19 concessionary fare payments once changes have been made. The publication and circulation of the notifications follows an established notification process.

12. Impact

12.1 A full Impact Assessment has not been produced for this instrument as it is not expected to have a significant impact on the private, public or voluntary sectors.

12.2 However, a de minimis impact assessment has been provided that details the financial risks to the Government's bus emergency funding package should concessionary fare payments not continue at pre-Covid-19 levels.

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 of 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 DfT guidance, and will consider how these numbers inform the DfT CBSSG Restart package and forthcoming bus recovery package. A formal review is not planned because the amendment made by these Regulations only has effect until 5th April 2022.

15. Contact

15.1 Heidi Smith at the Department for Transport Telephone: 07971 145041or email: heidi.smith@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Crane, Deputy Director for Local Transport Covid-19 Response, 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.