EXPLANATORY MEMORANDUM TO

THE MANDATORY TRAVEL CONCESSION (ENGLAND) (AMENDMENT) REGULATIONS 2023

2023 No. 303

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument extends the current suspension of the requirement for Travel Concession Authorities ('TCAs') to ensure that operators are not better off as a result of concessionary reimbursement arrangements. The extension is to last until the end of the 2023/24 financial year, whilst a review of the concessionary reimbursement methodology is conducted in light of the impact of Covid-19 on travel patterns.

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, Mayoral Combined Authorities.

2.3 The temporary suspension was made under the Mandatory Travel Concession (England) (Amendment) Regulations 2021 (S.I. 2021/205) (the "2021 Regulations") as extended by the Mandatory Travel Concession (England) (Amendment) Regulations 2022 (S.I. 2022/284) (the "2022 Regulations") and would, but for this instrument, end on 5th April 2023. This instrument extends the suspension of the requirement until the end of the 2023/24 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 bus services providing concessions under section 145A

of the Transport Act 2000 (c. 38). The 2021 Regulations removed on a temporary basis, 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 2022 Regulations extended the removal of the requirement until the end of 5th April 2023. This instrument further extends the removal of the requirement until the end of 5th April 2024 to support a higher level of funding to the bus sector whilst a wholescale review is conducted and usage recovers.

7. Policy background

What is being done and why?

7.1 ENCTS is a statutory funding scheme which forms a significant revenue stream for English bus operators and is administered by TCAs who are local government bodies. TCAs are legally required to reimburse bus operators for carrying concessionary passengers under ENCTS. Funding for ENCTS is normally used to provide those with eligible disabilities and those of state pension age with free England-wide off-peak bus travel, by reimbursing bus operators.

7.2 Funding for ENCTS is provided to TCAs by the Department of Levelling Up, Housing and Communities' Settlement Funding Assessment, which is allocated by His Majesty's Treasury, through a formula to support a wide range of different activities. TCAs in England also have the powers to offer additional concessions, such as extending the scheme to other groups of eligible people, using local funding resources such as Council Tax.

7.3 At the start of the pandemic, DfT asked TCAs to pay concessionary fares funding to bus operators at pre-Covid levels, despite the fall in patronage, to support the bus sector.

7.4 Before the amendment made by the 2021 and the 2022 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 In order to remove legal obstacles to TCAs complying with DfT's ask to pay out at a rate higher than due, which arguably leaves operators financially better off as a result of providing a concession, 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" until 5th April 2022.

7.6 Following stakeholder feedback, it was clear to the DfT that a transition plan was required to allow TCAs to gradually reduce pre-Covid level payments to align with actual patronage. To support this, DfT laid the 2022 Regulations to extend the temporary suspension until the end of the 2022/23 financial year.

7.7 DfT published the Concessionary Travel Recovery Guidance, which set out the 'Recovery Strategy' in October 2021 detailing the default transition plan of gradually reducing pre-Covid concessionary payments by 5% every other month back to reimbursement in line with actual patronage levels to avoid a sudden drop in funding. Following the impact of the Omicron variant on patronage recovery, DfT also published an 'Alternative Recovery Strategy' in early 2022 which set out the option

for delaying this transition by 3 months. The intention of the strategies was to allow for a gradual reduction in pre-Covid concessionary payments to avoid a sudden reduction in funding. A copy of the Concessionary Travel Recovery Guidance and the Alternative Recovery Strategy can be requested from the key contact listed at paragraph 15.1 below.

7.8 However, concessionary patronage has not recovered as quickly as anticipated and as bus operators rely heavily on concessionary funding, if all TCAs paid out in line with actual levels, this would likely result in service cuts in 2023/24 which goes against the ambitions set out in the National Bus Strategy. The National Bus Strategy can be found on the GOV.UK website here.[1]

7.9 If this instrument is not laid, TCAs will not be able to comply with DfT's ask to continue to pay out concessionary fares funding at a rate higher than due in 2023/24. As a result, it is likely that there will be an increase in the number of appeals of reimbursement arrangements by operators.

7.10 Therefore, this instrument aims to extend the approach whereby TCAs are able to pay out at a rate higher than due to support the bus sector in the recovery from Covid-19. As before, implementation would be encouraged by DfT but would be at the discretion of each TCA.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

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 extensive engagement with the Confederation of Passenger Transport, Urban Transport Group, and the Local Government Association. Stakeholders were appreciative of the additional flexibility a further instrument would provide in the 2023/24 financial year.

11. Guidance

11.1 Supplementary Guidance for 2023/24 was sent to TCAs in November 2022, alongside the annually updated Reimbursement Guidance and Calculator. The Reimbursement Calculator can be found on the GOV.UK website here.[2] This Supplementary Guidance included information on the extension of this instrument and encouraged the continued payment of concessionary reimbursement at pre-pandemic levels. It also mentioned the upcoming review and the Reimbursement Guidance 2023/24 which provided stakeholders with relevant information required for the 2023/24 financial

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980227/DfT-Bus-Back-Better-national-bus-strategy-for-England.pdf
[2] https://www.gov.uk/government/publications/concessionary-bus-travel-reimbursement-calculator

year. A copy of the Supplementary Guidance can be requested from the key contact listed at paragraph 15.1 below.

12. Impact

12.1 The impact on 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 the 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, connecting and strengthening communities. If this instrument is not laid, and bus services are cut, there will likely be a negative impact on the local economy and communities in general, including household finances and productivity.

12.3 There will not necessarily be any direct impact on public finances. This removes a legislative barrier to reimbursing operators at a rate greater than patronage, rather than requiring them to do so. The funding for such reimbursement is provided by the Department of Levelling Up, Housing and Communities' Settlement Funding Assessment. A Value for Money assessment has not been undertaken. The last assessment of the Value for Money of concessionary travel was that it provided low to medium value for money.

12.4 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 of this legislation is that DfT will continue to monitor the views of stakeholders in relation to the maintenance of pre-Covid-19 concessionary fare payments to bus operators being made in line with DfT's request that they continue with this higher level of funding.

14.2 A statutory review clause is not included in the instrument because the amendment made by this instrument only has effect until the end of the 2023/24 financial year.

15. Contact

15.1 Katie Grieve, Concessionary Travel Policy Advisor at the Department for Transport, Telephone: 07814068129 or email: katie.grieve@dft.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Matthew Crane, Deputy Director for the Local Transport Bus Funding Division, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Richard Holden MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.