EXPLANATORY MEMORANDUM TO

THE MANDATORY TRAVEL CONCESSION (ENGLAND) REGULATIONS 2011

2011 No. 1121

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument makes regulations for reimbursement arrangements between travel concession authorities (TCAs) and operators of public passenger transport services participating in the mandatory English national bus concession.

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

3.1 The review provisions contained in regulation 2 of this instrument are made by virtue of powers contained in section 160(1) of the Transport Act 2000.

4. Legislative Context

4.1 Provision for bus travel concessions in England is contained in five separate pieces of primary legislation: the Transport Act 1985, the Greater London Authority Act 1999, the Transport Act 2000, the Travel Concession (Eligibility) Act 2002 and the Concessionary Bus Travel Act 2007.

4.2 The Transport Act 1985 sets out provisions relating to discretionary travel concessions including, at section 94, provision relating to the reimbursement of bus operators.

4.3 The Travel Concession Schemes Regulations 1986 (SI 1986/77) were made using the Transport Act 1985 powers and provide detail about reimbursement arrangements for the concession. They state that operators should be reimbursed on a 'no better and no worse off' basis.

4.4 The Transport Act 2000 makes provision relating to the mandatory travel concession and includes, at sections 149 and 150, provision relating to the reimbursement of bus operators.

4.5 Until now, no regulations setting out details of the reimbursement arrangements for the mandatory travel concession have been made under the 2000 Act.

4.6 These regulations are made under powers including the following:

- section 149(3) of the Transport Act 2000 allowing the Secretary of State for Transport to make regulations regarding the determination of

reimbursement payments by TCAs and the manner in which such payments are made to operators.

- section 150(6) of the Transport Act 2000 allowing the Secretary of State for Transport to make regulations as to the form and content of notices regarding applications by operators of public passenger transport services to him. These applications are made by operators regarding the modification of proposed reimbursement arrangements, or proposed variations by TCAs to their travel concession schemes.

- Section 150(6) of the Transport Act 2000 also provides that regulations may make provision as to the procedure to be followed in connection with applications made by operators under subsection 150(3) of the Act and the appointment of a person to determine those applications on behalf of the Secretary of State.

4.7 Section 240(3) of the Greater London Authority Act 1999 makes provision for concessionary travel for older and disabled persons resident in Greater London. These regulations are not applicable to the reimbursement arrangements regarding London bus operators contracted to Transport for London by means of route franchises.

4.8 European regulation No 1370/2007 also has relevance for travel concessions. That EU regulation sets out the overarching principles of reimbursement and what is considered to be appropriate reimbursement. These regulations are designed to work along side the EU regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 A mandatory bus concession for older and disabled people has been in place since 2001. The scheme has gradually been extended since its introduction and since April 2008 has provided free off-peak local bus travel to eligible older and disabled people anywhere in England. Around £1 billion a year is now being spent on concessionary travel in England and it is very popular with the 11 million people who benefit from the opportunity of greater freedom and independence that it provides.

7.2 TCAs are required by law to reimburse bus operators for carrying concessionary bus travellers, on the principle that the operators are no better off and no worse off by taking part in the mandatory travel concession. The aim is not to subsidise bus operators, but to pay for any increased costs that they have incurred as a consequence of having to offer concessionary travel.

7.3 There has been widespread confusion regarding the administrative processes applicable to mandatory travel concession reimbursement arrangements as well as to the applications made by operators to the Secretary of State in connection therewith. Therefore there is a need to clarify the administrative procedures that are to apply to these reimbursement arrangements and applications. This is expected to be achieved by introducing new regulations under the 2000 Transport Act and by adopting new non-statutory reimbursement guidance based on new research findings.

7.4 The purpose of this instrument is:

- To set out procedural arrangements for statutory mandatory travel concession schemes under sections 149(3) and 150(3) of the Transport Act 2000.

- To clarify that the Secretary of State (or independent decision maker on his behalf) has the ability to adjust the revenue reimbursement rates or additional cost payments being offered by TCAs both upwards and downwards when considering bus operators applications regarding the statutory mandatory travel concession. This is in line with EU law requirements that operators must not be over compensated for the provision of public service obligations.

- To improve some other aspects of existing regulations. More specifically:

    - To make provisions for TCAs to be able to require data on (1) ticket prices, sales and revenue for the purpose of calculating the average fare forgone; (2) adult commercial fare for the purpose of calculating net additional marginal capacity costs.

8. Guidance

8.1 The Department for Transport provides guidance to local authorities and bus operators on how to calculate appropriate reimbursement, which sets out the Department's preferred method for calculating reimbursement. However TCAs are free to use the methodology of their choice subject to ensuring compliance with the objective that individual operators are left no better and no worse off as a consequence of their participation in the statutory travel concession.

8.2 In advance of making these regulations, the Department published revised reimbursement guidance on 29th November 2010 with a view to improve on the current method of reimbursing bus operators for providing the statutory minimum concession. The revised guidance has largely been informed by extensive research conducted by the Institute for Transport Studies at the University of Leeds. The new guidance provides clear and simple advice with the aim of reducing the scope of dispute between TCAs and operators in future years.

9. Consultation outcome

9.1 In September 2010, the Department for Transport issued a consultation paper on "Reimbursement Arrangements for the Concessionary Bus Travel Scheme in England" (http://www.dft.gov.uk/consultations/closed/2010-34/) which sought the views of stakeholders on the revised guidance and proposed changes to regulations governing concessionary travel reimbursement.

9.2 TCAs and passenger groups broadly endorsed the proposed regulations. They welcomed regulations under the Transport Act 2000 specifying procedural arrangements of reimbursement for the statutory concession. They also felt that the regulation recognising the independent decision maker's ability to make upward and downward determinations to reimbursement levels would act to reduce the number of applications made by operators.

9.3 Some operators did not agree with the proposal to recognise the independent decision maker's ability to increase/reduce reimbursement in their decisions. They did however broadly endorse the proposed changes to regulations, such as regulations under the Transport Act 2000 making provisions for procedural arrangements of reimbursement between TCAs and operators. None of the operators considered the additional data requirements to be a significant burden on their businesses. One operator suggested however that the additional data requirements should be supported by additional regulations protecting the confidentiality of operators' data.

9.4 One area of discontent among both TCAs and operators was the 56 day application window (Section 150(3)(a) of The Transport Act 2000). They felt that the restriction on the application window meant that operators were forced to make pre-emptive applications that were then later withdrawn as outturn data on concessionary journeys became available. However, the intention of increasing this from 28 days to 56 days provided by the Concessionary Bus Travel Act 2007 was to give more time for both sides to reach agreement so operators would not lodge speculative applications. As this provision for operators making applications to the Secretary of State for Transport is enshrined in primary legislation, it falls outside the scope of the proposed changes to regulations.

10. Impact

10.1 A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at http://www.dft.gov.uk/ and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

11. Regulating small business

11.1 These regulations set out the administrative procedure that operators and TCAs must follow in setting out their reimbursement arrangements and in applications to the Secretary of State. The only quantifiable costs to operators are the one off costs of familiarising themselves with the new regulations. The

over arching principles of reimbursement are set out in EU regulation 1370/2007 and small businesses are not exempt from these.

12. Monitoring & review

12.1 The Department for Transport will liaise with TCAs and transport operators to ensure that there are no difficulties with the practical implementation of these regulations.

12.2 These regulations will automatically cease to be in force after seven years. These regulations also contain provisions requiring that they be reviewed five years after they come into force in order to reassess whether they should be allowed to continue in force beyond their specified cessation date.

12.3 We also expect to revise to the 1986 regulations covering discretionary concessions shortly. The revisions will be made in order to bring the 1986 Regulations up to date and consistent with the terminology used in this instrument. The revisions will also ensure that the 1986 regulations are consistent with and do not overlap EU Regulation 1370/2007.

13. Contact

13.1 Mouna Kehil at the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR, Tel: 020 7944 4589 or email: mouna.kehil@dft.gsi.gov.uk can answer any queries regarding the instrument.

Title:	Impact Assessment (IA)
Concessionary Travel Reimbursement Regulations **Lead department or agency:** Department for Transport **Other departments or agencies:**	**IA No:** DFT00068 **Date:** 10/03/2011 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Shamanthy Ganeshan (020 7944 5427)

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

1. Uncertainty about the status of reimbursement arrangements between Travel Concession Authorities (TCAs) and Operators for the mandatory England National Concession under the Transport Act 2000. Government intervention is required to clarify this position.
2. Asymmetry of risk to operators in Appeals whereby independent decision maker can recommend increased reimbursement, but not reduce it. Government intervention to modify regulation so that independent decision maker can recommend lower reimbursement.
3. Uncertainty about the legal basis for TCAs to require operators to supply data in order to inform calculation of average fare in the absence of a concessionary scheme in line with current guidance.

What are the policy objectives and the intended effects?

1. To improve the clarity of the existing legal framework covering reimbursement arrangements. This will lead to a reduction of administrative burden on TCAs and Operators.
2. To bring the legal framework in line with current reimbursement practices and revised reimbursement guidance. This will improve clarity for and provide necessary legal powers to TCAs wishing to use revised DfT Reimbursement Guidance.
3. To improve the balance of risk associated with operator appeals on reimbursement arrangements. This will reduce the number of appeals made.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 No change to existing regulations; Option 2 Regulations for concessionary travel reimbursement under Transport Act 2000 ; Currently TCAs and Operators use regulations that cover discretionary travel concession schemes under the Transport Act 1985 in relation to both their discretionary schemes and the mandatory England National Concession under the 2000 Act. Changes to the regulations would increase clarity and certainty, with scope for reduction in administrative costs. The change in the regulation allowing a reduction in reimbursement on appeal would reduce asymmetry of risk for operators making an appeal. Clarification of the data requirements is also required to support new guidance on reimbursement to achieve no better no worse off reimbursement. Alternatives to regulation are not feasible because of the need to comply with EU 1370/2007.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 4/2014 **What is the basis for this review?** PIR. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: NORMAN BAKER Date: 05/04/2011

Summary: Analysis and Evidence

Policy Option 2

Description: Introduce regulations for Concessionary Travel Reimbursement under the Transport Act 2000

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.02	**High:** 1.34	**Best Estimate: 0.65**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.02	1	Optional	**0.02**
High	0.03		Optional	**0.03**
Best Estimate	0.03			**0.03**

Description and scale of key monetised costs by 'main affected groups'

One-off cost to bus operators of familiarising themselves with the new regulations.

Other key non-monetised costs by 'main affected groups'

Cost to bus operators of supplying data(but likely to be very small as this additional data is already collected by operators and in any case they are entitled to compensation from TCAs for associated administrative costs) Possibility of lower reimbursement paid by TCAs to bus operators as a result of independent decision maker directing reductions in reimbursement paid. Depends on reaction of bus operators to change in risk in outcomes of appeals.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		0	**0**
High	Optional		0.16	**1.37**
Best Estimate			0.08	**0.68**

Description and scale of key monetised benefits by 'main affected groups'

Reduced appeal costs for government and TCAs in comparison to option 1.

Other key non-monetised benefits by 'main affected groups'

Reduced appeal costs for bus operators
Reduced administrative costs for TCAs due to simplification of regulations
Possible lower reimbursement paid by TCAs to operators depending on reaction of bus operators to change in risk in outcomes of appeals. Any reduction would facilitate the 'no better, no worse off' objective and reduce any potential over-reimbursement.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

Uncertainty about the behavioural reaction of bus operators to change in risk of outcome of appeals. Likely to be fewer appeals if operators envisage a significant risk of lower reimbursement. Outcome of appeals that do take place and effect of fewer appeals as a result of the change in regulations on total reimbursement is uncertain, but possible that reimbursement overall could be lower.

Direct impact on business (Equivalent Annual) £m):				In scope of OIOO?	Measure qualifies as
Costs: £0.004m	**Benefits:** 0	**Net:** 0		Yes	IN

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			01/04/2011		
Which organisation(s) will enforce the policy?			Department for Transport		
What is the annual change in enforcement cost (£m)?			Nil		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** Nil	**Non-traded:** Nil	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro** N/Q	**< 20** N/Q	**Small** N/Q	**Medium** N/Q	**Large** N/Q
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Transport Act 1985 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1985/cukpga_19850067_en_1
2	The Travel Concession Schemes Regulations 1986 (SI 1986, no 77) http://www.legislation.gov.uk/uksi/1986/77
3	Transport Act 2000 http://www.legislation.gov.uk/ukpga/2000/38/pdfs/ukpga_2000038_en.pdf
4	Impact Assessment of Administrative Reform of the National Bus Concession in England http://www.legislation.gov.uk/uksi/2010/1179/pdfs/uksiem_20101179_en.pdf
5	Consultation on Reimbursement Arrangements for the Concessionary Bus Travel Scheme in England http://www.dft.gov.uk/consultations/closed/2010-34/
6	Impact Assessment of Reimbursement Arrangements for the England-wide Concessionary Travel Scheme http://www.dft.gov.uk/consultations/closed/2010-34/ia.pdf
7	Concessionary Travel for Older and Disabled People: Guidance on Reimbursing Bus Operators http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/reimbursementappeals/busoperators/pdf/busoperators.pdf

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	£0.03	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	£0.03	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	£0.12	£0.12	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07
Total annual benefits	£0.12	£0.12	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07	£0.07

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Problems with existing regulations

There are aspects of the existing regulations which are causing problems for TCAs and bus operators in the day to day management of the system of reimbursing bus operators for carrying concessionary passengers. These problems are partly to do with the lack of clarity and certainty in some of the regulations, but also an imbalance in the risks of the appeals system that could affect the 'no better, no worse off principle that is at the heart of the reimbursement system. The specific problems are described below.

General Reimbursement Arrangements

The Transport Act 1985 sets out provisions relating to **discretionary** travel concessions including at section 94 provisions relating to the reimbursement of bus operators. The Travel Concession Schemes Regulations 1986 were made using the Transport Act 1985 powers and provide further details about the calculation of reimbursement payments and set out that operators should be reimbursed on a 'no better and no worse off' basis.

The Transport Act 2000 sets out provisions relating to the **mandatory** travel concession scheme and includes at section 150 provisions relating to the reimbursement of bus operators. However, the Transport Act 2000 does not repeat the 'no better and no worse off' requirement set out in the 1986 regulations and neither have any regulations setting out details of the reimbursement arrangements been made under the 2000 Act. In practice the provisions in the 1986 regulations have been applied to both mandatory and discretionary concessionary travel schemes.

Replies to the Consultation on Reimbursement Arrangements for the Concessionary Bus Travel Scheme in England (reference 5) noted the problems that can arise with using the 1986 regulations with the 2000 Act because the former relate to non-compulsory local concessions which are very different in administration. The general usage of the 1986 Regulations to interpret completely separate legislation is not desirable and has led to some argument in appeals.

Appeals

Under the Transport Acts 1985 and 2000, bus operators are able to make an appeal to the Secretary of State when they disagree with the reimbursement arrangements set out by the relevant Travel Concession Authority (TCA). These are on the grounds that there are special reasons why the arrangements would be inappropriate with respect to one or more local services provided by the operator. Under the 2000 Act, modified by the Concessionary Bus Travel Act 2007, covering the statutory concession, this appeal window is 56 days.

The number of appeals by bus operators to the Secretary of State has declined from over a hundred a year in 2007/08 to 26 appeals in 2010/11 as Table 1 below illustrates. We do however expect to receive a high number of appeals in 2011/12 as operators are likely to want to test the new reimbursement guidance published this year.

Table 1: Appeal Determinations

Year	Number of Appeals received	Invalid Appeals	Withdrawn Appeals	Appeals Upheld	Appeals Dismissed	Higher reimbursement level determined
2006/7	66	1	22	38	5	N/A*
2007/8	102	4	27	33	38	21

2008/9	100	5	57	22	16	16
2009/10	49	0	13	33	3	4
2010/11	26	0	8	In progress		

***** In years 2006/7 and 2007/8 the independent decision maker ordered various modifications to schemes without determining a specific reimbursement factor.

Under current legislation an operator is able to make an appeal to the Secretary of State where the operator believes that the scheme as set out by a TCA for a particular route or area is unreasonable. As the regulation currently stands the independent decision maker, when considering appeals on behalf of the Secretary of State, can make a judgement that reimbursement should be increased from that offered by the TCA or stay the same. The independent decision maker cannot however recommend a reduction in the amount of reimbursement offered by the TCA. It is the intention of the change to the regulation to allow the independent decision maker, if he or she thinks it is appropriate, to recommend a reduction in the amount of reimbursement offered by the TCA. In other words the bus operator would, in making an appeal, face a downside risk on the level of reimbursement.

Table 2 below shows the average reimbursement factor (RF) claimed by operators in appeals, the average RF offered by TCAs, the average RF that was determined by the independent decision maker and the average RF that would have been determined had the decision maker been able to direct TCAs to lower reimbursement. The average RF offered by TCAs is higher than the average RF determined by the independent decision maker. This difference is an average of cases where the RF determined by the independent decision maker would be lower, the same or higher than offered by the TCA. In cases where the RF offered by the decision maker would have been lower than offered by the TCA. under the existing regulation the operator does not have to take into account the risk of getting less than the TCA offers.

The Reimbursement Factor (RF) is the percentage of total observed concessionary trips that would have been made anyway in the absence of the free fare concession. The higher the reimbursement factor the higher the level of total reimbursement keeping all other factors constant.

Table 2: Outcome of Appeals

Year	Average RF claimed by operators	Average RF offered by TCAs	Average RF determination in appeals	Average RF if decision maker could order reductions
2008/9	69.2%	49.1%	50.4%	44.3%
2009/10	66%	47.8%	48.2%	43.6%

On 29 November 2010, the Department for Transport issued revised guidance setting out the Department's preferred method of calculating concessionary travel reimbursement for TCAs and bus operators for schemes beginning from 1 April 2011. The revised guidance is based on extensive research conducted by the Institute of Transport Studies (ITS) at Leeds University and improves on previous guidance by providing clearer and simpler advice with the aim of reducing the scope of dispute between TCAs and Operators in future years. The impact assessment for the revised guidance estimated potential savings in reimbursement in the range of £54-£100 million per annum if all TCAs were to adopt the DfT guidance.

Experience with the previous guidance may not be a completely certain guide to how appeals and determinations will operate with the new guidance. However, without the change to the regulations there

would still be an asymmetry of risk with respect to the determined level of reimbursement for operators who decide to appeal.

As mentioned above, an increase in the number of appeals made is expected in the next few years as a result of the revised guidance. The exact reaction of operators to the change in regulations is not certain. It is possible that operators would put forward fewer appeals especially where there is a risk that reimbursement might be reduced. We know from recent experience that in a significant proportion of appeals the independent decision maker calculated a reimbursement factor below that offered by the TCA. Where operators may still go ahead with appeals, irrespective of the changes to regulations, there is a possibility that reimbursement may reduce, which would be to the benefit of TCAs but to the cost of operators. Overall, we expect the change in regulations will be to reduce the number of appeals made, which will to some extent mitigate the significant increase in appeals expected in the short to medium term as a result of the revised guidance.

Data Requirements

The reimbursement methodology as set out in revised Department for Transport guidance requires data from operators that TCAs may or may not have requested from them in the past. These are namely

- The average commercial adult fare
- The revenue from ticket types available to adult commercial passengers on services on which travel concessions are available
- The number of tickets sold of ticket types available to commercial passengers on services on which travel concessions are available

Existing regulations list the type of information that TCAs may not request rather than provide a list of information that TCAs should be supplied with. This creates an uncertainty about the precise information that TCAs can be supplied with. This uncertainty is relevant to the new guidance on concessionary travel reimbursement where the preferred methodology for calculating the average fare that concessionary passengers would have paid in the absence of the concessionary travel scheme relies on information about the number of different types of tickets purchased and the ticket price by non-concessionary passengers. Therefore in order to reduce uncertainty and ensure that important information is available to TCAs, the new regulations will specifically allow TCAs to obtain the above information from bus operators. These additional data requirements are not expected to generate additional work for operators as they are data items routinely collected by operators anyway.

Rationale for intervention

The regulations have an important influence on the day to day management of concessionary travel schemes, and because of the commercial and legal interests that they affect, it is important that they are clear, encourage efficient administration and are consistent with, and support, the achievement of the ‘no better, no worse off’ principle of reimbursement of bus operators. We believe that the proposed changes to the regulations achieve these objectives at minimum costs and maximum effectiveness.

Policy objective

TCAs are required by law to reimburse bus operators for carrying concessionary passengers on the principle that the operators are ‘no better and no worse off’ by taking part in concessionary travel schemes. Reimbursement should take account of the passengers who would have travelled in the absence of a scheme and the fares that those passengers would have paid. In addition operators should be reimbursed for the additional costs they incur in carrying trips that are generated as a result of the scheme.

In addition to the ‘no better, no worse off’ principle, the Department for Transport wishes to encourage greater efficiency in the running of the concessionary travel schemes. Significant costs are incurred by TCAs, bus operators and their advisers. The Government has introduced measures to reduce costs and

improve efficiency, including administrative reform (reference 4) and new guidance for TCAs (reference 6). The changes to the regulations, including greater clarity, are part of that drive towards greater efficiency.

Description of options considered

1. Do not introduce regulations under the 2000 Act, but assume new guidance implemented
2. Make changes to the regulations as described above.

Non-regulatory options are not feasible because the no better no worse principle has to be followed in concessionary travel reimbursement according to the principles set out in EU Directive 1370/2007. This regulation sets out the conditions under which competent authorities compensate public service operators for costs incurred when imposing or contracting for public service obligations.

Costs and benefits of each option (including administrative burden)

The costs and benefits in option 1 are based on the estimates made in the impact assessment of the Reimbursement Arrangements for the England-wide Concessionary Travel Scheme (reference 6). The estimates assume that the guidance is implemented and this in turn affects the number of appeals in the early years.

Under option 2 we think that there would be a reduction in costs related to appeals due to the reduction in appeals in comparison to the situation in option 1. We have estimated a range of the costs as they affect Central Government and TCAs. There would also be some effect on bus operators but we have not been able to estimate the monetary value. There may be a reduction in the administration costs of some TCAs (and possibly bus operators) due to simplifying and clarifying the regulations, but we have not been able to estimate the monetary value of these savings. Bus operators may experience some increase in costs to supply ticket and fare data if they do not supply that data already. However, the consultation responses did not mention any cost implications of the requirement to supply data as the data items listed in new regulations are routinely collected by operators anyway. The effect on the overall level of reimbursement is uncertain because it depends on the behavioural reactions of operators to changes in the risks of appeal outcomes. This is discussed in more detail below.

1. Changes in administrative costs

The scale of the changes in costs is not easy to estimate. The responses to the consultation were very helpful in terms of the qualitative effects of the changes to the regulations but did not provide information about likely changes in expenditure. In practice the benefit is to do with legal certainty rather than any significant effect on administrative costs.

It is not expected that the new reimbursement regulations will impose any additional ongoing administrative burden on operators. The regulations enable TCAs to request information from operators on certain data items such as adult commercial fares. However these data items are collected routinely by operators and the burden imposed on them as a result is expected to be minimal. In any case, both regulations and departmental guidance state that bus operators are entitled to compensation for any additional burden imposed on them by TCAs for the purposes of calculating reimbursement.

There may however be a one-off cost to bus operators as a result of familiarising themselves with the change in the regulations. To estimate this cost, it is assumed that this may take one hour of an employee's time within each bus operator. According to the Annual Survey of Hours and Earnings (ASHE) 2010[1], the hourly wage of business professionals is £21.31. Applying 30% overheads, the hourly wage estimate to be used is £27.70.

The Impact Assessment of administrative reform of the national bus concession in England (http://www.dft.gov.uk/consultations/archive/2009/concessionarytravel/consultationdocument080509.pdf)

[1] See http://www.statistics.gov.uk/downloads/theme_labour/ashe-2010/2010-occupation.pdf

carried out last year estimated that going forward there would be 65 to 89 concessionary travel schemes outside London, with an average of 13 operators per scheme. This implies a total of 845 to 1,157 bus operators in England. The one-off administrative burden is therefore estimated to be £0.023m-£0.032m. This cost will be incurred in the first year only.

In order to be conservative, the higher estimate has been treated as the best estimate on the summary sheet.

3. Changes in appeals costs

Depending on the extent of the behavioural reaction of operators we estimate that the number of appeals could be significantly reduced. We know from recent appeals that the level of reimbursement claimed by operators was reduced by the independent decision maker in most cases. In addition over the 3 years between 2007/08 and 2009/10, of the 145 appeals considered by the independent decision maker, in 65 (or 45%) the independent decision maker would, if it had been possible, have recommended a lower reimbursement rate than that currently being paid by the TCA. From 1 April 2011 the level of calculated reimbursement will be influenced by new guidance, and that may have an effect on the number and nature of appeals, so past experience is not an exact guide to what will happen in the future. Replies to the consultation from bus operators suggested that a regulation allowing a reduction in reimbursement would have an influence on their behaviour in deciding on whether to make appeals. In the absence of definitive data it is our best judgment that the number of appeals could be reduced. The upside potential for reducing appeals is 45% ,reflecting recent experience with the present guidance and assuming that operators have perfect information about the outcome of appeals. On the other hand if information about the outcome of appeals is completely asymmetric so operators always definitely think they will get higher reimbursement, but actually get it reduced, then the number of appeals will not change. We think that the most likely outcome is between these two figures

In the impact assessment on the changes to the reimbursement guidance it was estimated that the number of appeals would jump by between 50 and 100% in 2011/12 compared with 2010/11, stay at that level until 2012/13 and then revert to the 2010/11 level in 2013/14 and subsequent years. This was based on previous experience when there has been changes in guidance and the likelihood that reimbursement would be reduced so encouraging operators to appeal. But once operators and TCAs had experience with the new guidance we expect the number of appeals to fall back to current levels. Option 1 in the tables below is the middle of the range of appeals costs estimated in the impact assessment on the change in guidance. In terms of the number of appeals, there are 26 appeals in 2010/11. This then rises by 75% in 2011/12, stays at that level in 2012/13 and then drops back to 26 in 2013/14. Option 2 shows the effect of reducing the number of appeals within a range of 0%, to 45% on option 1 as a result of changes in regulations. Table 3 below summarises the number of appeals in each option.

Table 3 Number of Appeals (rounded)

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/12
Option 1	26	46	46	26	26	26	26	26	26	26	26
Option 2											
Low	26	25	25	14	14	14	14	14	14	14	14
Central	26	36	36	20	20	20	20	20	20	20	20
High	26	46	46	26	26	26	26	26	26	26	26

Central Government

Based on recent experience with appeals we estimate from internal analysis that the total Central Government costs per appeals case submitted is around £4,000. This includes the DfT costs for staff, legal advice, and independent decision makers. Thus the costs in 2013/14 are £4000 *26 appeals = £104,000.Table 4 below shows the costs of each option, the annual savings and the NPV. The NPV saving

in appeals costs for Central Government over 10 years is between around £0 and £450,000, with a central estimate of around £225,000.

Table 4 Appeals costs to Central Government

£'000, 2009/10 prices

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/12	NPV
Option 1	£182	£182	£104	£104	£104	£104	£104	£104	£104	£104	£1,013
Option 2											
Low	£100	£100	£57	£57	£57	£57	£57	£57	£57	£57	£557
Central	£141	£141	£81	£81	£81	£81	£81	£81	£81	£81	£785
High	£182	£182	£104	£104	£104	£104	£104	£104	£104	£104	£1,013
Saving(-)											
Low	-£82	-£82	-£47	-£47	-£47	-£47	-£47	-£47	-£47	-£47	-£456
Central	-£41	-£41	-£23	-£23	-£23	-£23	-£23	-£23	-£23	-£41	-£228
High	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0

TCAs

The average cost of appeals for TCAs is estimated to be £8,000 for a standard appeal case. This includes management time, legal advice, administration time and consultancy time, and is based on internal analysis of information from TCAs.

Using the same assumptions as for the Central Government case the total appeals costs for TCAs in options 1 and 2 and their variants can be estimated. Table 5 below shows the figures

The NPV saving in appeals costs is in the range between about £0 and £900,000, with a central estimate of about £450,000.

Table 5 Appeals costs to TCAs

£'000, 2009/10 prices

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/12	NPV
Option 1	£364	£364	£208	£208	£208	£208	£208	£208	£208	£208	£2,026
Option 2											
Low	£200	£200	£114	£114	£114	£114	£114	£114	£114	£114	£1,114
Central	£282	£282	£161	£161	£161	£161	£161	£161	£161	£161	£1,570
High	£364	£364	£208	£208	£208	£208	£208	£208	£208	£208	£2,026
Saving(-)											
Low	-£164	-£164	-£94	-£94	-£94	-£94	-£94	-£94	-£94	-£94	-£912

Central	-£82	-£82	-£47	-£47	-£47	-£47	-£47	-£47	-£47	-£47	-£456
High	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0

Operators

If there are fewer appeals operators will save costs, but we do not have any information on the costs that operators incur on appeal to make an estimate of these savings.

The overall savings in appeal costs to Central Government and TCAs that can be valued amount to a range of between about £0 to £1,350,000 over 10 years in present value terms, with a central estimate of about £675,000.

4. Reimbursement

The impact assessment of the Reimbursement Arrangements for the England-wide Concessionary Travel Scheme (reference 6) estimated that due to the implementation of the new guidance, reimbursement would be reduced in future years. The first round effect of this reduction is, in appraisal terms, a transfer between operators and TCAs though there could be second round wider impacts on bus passengers if operators change fares and the level of service.

The effect on reimbursement of the change in regulations and specifically the regulation that allows the independent decision maker to recommend a reduction in reimbursement, is not obvious. Operators making appeals in the past have not had to factor in the possibility of reimbursement being reduced. If that possibility is present in the future then we would expect that operators (given that they are aware of the data in table 2) would be more cautious in making appeals, and less likely to proceed with appeals where there was a possibility of lower reimbursement. We would still expect operators to make appeals where they thought that the level of reimbursement was inadequate and had good evidence to back up their appeal.

Evidence from previous appeals suggests that in a number of cases the independent decision maker's recommended reimbursement would have been lower than that paid by TCAs if that had been possible. However, previous experience is not necessarily a good guide to the future because the guidance on concessionary travel reimbursement has been revised with effect from 1 April 2011.

Currently, where the independent decision maker estimates a reimbursement factor that is below that offered by the relevant TCA in an appeal, he still directs that the initial reimbursement factor offered by the TCA is maintained. If the impact of the new regulations is that operators do not make any appeals on all cases where the decision maker is expected to determine a lower reimbursement factor, then the level of reimbursement will be unchanged between options 1 and 2. We think that this scenario is plausible if bus operators are fairly certain of the outcomes of appeals. However, we recognise that there are other possibilities. Bus operators will decide which appeals to make given their assessment of the probabilities in each case of whether the independent decision maker might decide that an increase or decrease in reimbursement is appropriate. Given the uncertainties there is a possibility that some appeals under the new regulations may result in lower reimbursement than would have been the case prior to the change in regulations. We have also considered the possibility that there are cases where operators decide not to take the risk of appeal with the new regulations, but without the change to the regulations they would have appealed in these cases and the independent decision maker would have awarded an increase in reimbursement.

We recognise that if bus operators are uncertain about the outcome of appeals it is possible that reimbursement might be lower in option 2 than option 1. We do not have sufficient information to make a judgement on how significant this effect on reimbursement might be. However, we do note that as the new guidance becomes more familiar and there is experience with appeals it should be easier for operators to be more certain about the outcome of appeals.

Risks and assumptions

For the purposes of this impact assessment we have assumed that the changes in regulations described above have the intended legal effect. The risk of unintended consequences has been partly addressed by inclusion of the proposed changes to the regulations in the Consultation on Reimbursement Arrangements for the Concessionary Bus Travel Scheme in England, and careful consideration of replies by TCAs, bus operators and others to that consultation.

The impact of the changes in regulations on costs and in particular appeals costs depends on the reaction of operators, and in particular how operators react to the revision in the regulation that allows a reduction in reimbursement in cases where operators make appeals. Operators making appeals in the past have not had to factor in the risk of reimbursement being reduced. If that risk is present in the future then we would expect that operators would be more careful in making appeals, and less likely to proceed with appeals where there was a risk of lower reimbursement. We would still expect operators to make appeals where they thought that the level of reimbursement was inadequate and had good evidence to back up their appeal.

Our best judgement is that operators will react to the new risk of lower reimbursement by reducing to some extent the number of appeals they make. We know from the consultation responses that bus operators are very concerned about the effect of the change to the regulation. We interpret this concern as an intention to reduce the number of appeals because of the risk that appeal could result in reduced reimbursement. We have included a range in the reduction of appeals to acknowledge the uncertainty of operator reactions. Our best judgement is that the number of appeals would reduce by a amount towards the middle of the range.

The effect of the change in the regulation, on its own, on the overall level of reimbursement is difficult to predict. The description above has made some assessment of how operators may react. We think that no change in reimbursement is plausible, but also recognise that the level of uncertainty over the outcome of appeals may influence operators' decisions about whether to appeal or not, with the possibility that reimbursement could be lower.

Direct costs and benefits to business calculations (following OIOO methodology)

The regulations under the 2000 Act will be filling a gap in the regulatory framework to rectify the position of having no specific regulations making provisions for reimbursement arrangements under the mandatory concession. The new set of regulations will provide clarity in terms of the reimbursement arrangements between TCAs and Operators.

There will be a small one-off cost on operators in terms of the time taken to familiarise themselves with the new regulation. This is expected to be of the order of £0.02-0.03m in the first year only, with a maximum Equivalent Annual Net Cost to Business (EANCB) of £0.004m. It is expected that the additional data requested such as commercial fares and revenues will be readily available to operators. None of the consultation responses received from operators suggested that they would consider the measure to impose a significant burden on them.

If the independent decision maker directs that reimbursement can be both increased and decreased, that will introduce an element of uncertainty to operators. In the past, the independent decision maker only directed either an increase or no change in the rate of reimbursement offered by TCAs even if the decision maker deemed that a lower rate of reimbursement than that offered by the TCA would be appropriate.

It is expected that where operators have clear cut evidence to suggest that they should receive a higher rate of reimbursement than that offered to them by the TCA, they will not refrain from making appeals. However, there is the risk that with less clear cut cases, operators may decide not to appeal, even if they should actually receive higher reimbursement. This potential risk to businesses is likely to be a short term problem, with operators being able to better judge their chances of succeeding in appeals based on experience with the regulations and guidance. Negotiation between operators and TCAs should also reduce the likelihood of appeals.

Wider impacts

A reduced number of appeals should not on its own have significant wider effects. The direct costs to bus operators will be very small if not insignificant and the benefits will accrue mainly to TCAs in terms of lower administration and appeals costs. However we recognise that given the uncertainties of appeal outcomes there is a possibility that bus operators will have lower reimbursement than would have been the case without the change in regulations. In this scenario, and depending on how bus operators react to lower reimbursement, there could be reductions in services and increases fares. This would have wider detrimental effects on all existing bus users. We do not have sufficient information to quantify this effect. We think that the effect of uncertainty of appeals will reduce as bus operators become more familiar with the new guidance and experience with appeals.

To the extent that the change in risks of outcomes of appeals leads to reimbursement being paid on a no better no worse off criteria, then that is a desirable outcome, and is a potential improvement in the economic efficiency of support for bus services.

We have also considered the effects on different sizes of bus operators. Most of the existing appeals come from the major groups like Arriva, Go Ahead, First, and Stagecoach. Even the few smaller operators who do appeal tend to have other related activities such as excursions, so not all of them would come within the definition of small businesses. The new guidance also makes allowance for different type of services, such as low frequency services. For these types of services operators do not have to supply detailed fare and sales data. Many small operators have low frequency services so they would not be affected by the change to the regulation to do with supplying fare and trip data for those services. Small operators may also be affected by the threshold for operators with annual mileage below 150,000. This allows operators to negotiate reimbursement rather than follow the guidance, and these cases are less likely to come to appeal. We do not think that small operators will be affected by the simplification of regulations. Overall our judgement is that small operators will be less affected, and possibly not affect at all, by the change to the regulations. .

Summary and preferred option with description of implementation plan

The proposed changes to the concessionary travel reimbursement regulations would simplify and clarify existing regulations, make it possible for independent decision makers to reduce reimbursement on appeal, and clarify the data the TCAs can request from bus operators in order to calculate reimbursement.

The main identified quantified benefit arises from the reduction in the number of appeals. We estimate that the number of appeals will reduce by about 22.5% with a range from 0% to 45% reduction. This estimate is based on experience with existing guidance, but bearing in mind the effects of introducing new guidance, and also taking account of comments by bus operators in consultation responses. The resulting cost savings to Central Government and TCAs amounts to about £675,000 over 10 years in NPV terms with a range of +/- £675,000.

We have not been able to identify quantified impacts of the other changes in regulations, apart from a small one-off administrative burden of £0.02-0.03m. The main benefit is legal clarification of the principles of reimbursement.

The change in the regulation to cover data on ticket sales and prices supplied by bus operators to TCAs may have some cost implications for bus operators. However in the responses from bus operators to the consultation on concessionary travel reimbursement there was no mention of the cost of supplying such data, so we assume that the cost is not significant and is already readily available.

We have considered whether the lower number of appeals would affect the overall level of reimbursement. If bus operators are fairly certain about the outcome of appeals we think that the level of reimbursement would be unaffected. However, if there is uncertainty about the result of appeals it is possible that reimbursement might be lower. In appraisal terms this is a transfer between TCAs and operators. We think

that as experience with the new guidance and appeals grows, uncertainty will reduce. We do not have the information to make an estimate of the scale of this effect on reimbursement.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)]; Review will be carried out as part of the review of the new guidance on concessionary travel reimbursement to come into effect on 1st April. Policy review within three years of implementation.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] To review the extent to which appeals have reduced, that data is being provided, and that legal clarity has been achieved.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] The number and outcome of appeals is already monitored. Stakeholder views will be collected through existing channels and through special one off data collection
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] Appeals data from the last three years and information in impact assessment of concessionary travel reimbursement guidance
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Reduction in number of appeals below what they otherwise would have been. Greater legal clarity Successful data collection
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] DfT also regularly engage with local authority and bus operator representatives through its concessionary travel working groups and we will use these forums to assist us in reviewing the success of the policy.
Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

Add annexes here.