

These notes refer to the Concessionary Bus Travel Bill [HL] as brought from the House of Lords on 6th February 2007 [Bill 60]

CONCESSIONARY BUS TRAVEL BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Concessionary Bus Travel Bill [HL] as brought from the House of Lords on 6th February 2007. They have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill implements the Chancellor's announcement in the 2006 Budget that England residents aged 60 and over, and disabled England residents, will get free off-peak travel on all local buses anywhere in England.

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4. At the moment, mandatory bus travel concessions for England residents are provided on ‘eligible services’,¹ outside Greater London under ss145 to 150 of the Transport Act 2000; and in Greater London under ss240 to 244 of, and Schedule 16 to, the Greater London Authority Act 1999. Under the 2000 Act provisions, concessions are provided only in the area of the travel concession authority where the person resides², though there is a power to extend this to cover journeys across the border of that area and in the vicinity of that area. Under the 1999 Act provisions, the concessions that must be provided to all eligible London residents are concessions throughout the ‘London bus network’. The ‘London bus network’ is the network of buses procured by Transport for London. The only other local bus services which can be run in London are services under ‘London service permits’ issued by Transport for London. London service permit operators are not currently obliged to offer a concession.
5. This Bill changes both the Transport Act 2000 and the Greater London Authority Act 1999, so that the free bus travel concession is available not just in the area local to a pass holder’s residence, but also on local bus travel anywhere in England, including on the London bus network and on London service permit services.
6. The Bill provides for free local bus travel, for those eligible, from 9:30am until 11pm on weekdays and all day on weekends and bank holidays, anywhere in England (‘the national concession’). In addition, the Secretary of State is given a power to streamline the mechanisms for administering the national concession and reimbursing bus operators. Reimbursement could be streamlined by changing which tier of local authority is responsible for reimbursement in an administrative area, or by having the Secretary of State carry out reimbursement centrally. The Bill also allows the Secretary of State to streamline the administration of discretionary concessionary travel schemes (made by local authorities under s93 of the Transport Act 1985) and extends the period of time in which appeals can be made by bus operators in respect of reimbursement by English authorities for mandatory concessions.

¹ ‘Eligible services’ are as specified in orders made under s146 of the Transport Act 2000. Current orders (in respect of England and Wales) specify broadly that eligible services in England and Wales are ‘local services’ provided by local education authorities, or for older persons or disabled persons, or on buses. A minimum proportion of the seats must be available to the public for the service to be an ‘eligible service’ and there are other criteria designed to ensure that, for a service to be an ‘eligible service’, it must be accessible to the public for local travel. The term ‘local service’ is defined in s2 of the Transport Act 1985, broadly to encompass buses carrying passengers at separate fares locally, other than on private trips.

² Travel concession authorities are defined in s146 of the Transport Act 2000. In respect of England, these are currently non-metropolitan district councils, county councils for areas where there are no district councils, and Passenger Transport Executives for passenger transport areas. This definition includes unitary authorities, which are either county councils (to which district council functions have been transferred) or district councils (to which county council functions have been transferred).

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7. The Bill allows the Secretary of State and Welsh Ministers to make changes to the legislation applying in England and Wales respectively, to facilitate mutual recognition across the United Kingdom of passes issued under the English, Welsh, Scottish and Northern Ireland national concessionary schemes. The existing flexibility for the English and Welsh administrations to vary the scope of the statutory concession available in their respective territories is retained.
8. Local authorities will retain the discretion to offer their residents other travel concessions as well as or, in some cases (if the concessionaire agrees), instead of the national concession. Such voluntary concessions might include concessionary travel before 9:30am on weekdays, tokens for taxis, concessions on other modes of transport, such as trams, or travel on routes across national boundaries.

OVERVIEW OF THE STRUCTURE

9. The Bill has 16 clauses and three Schedules. Clauses 1 to 3 cover the national concession on journeys beginning outside the London bus network and clauses 4 to 7 cover the national concession for journeys beginning on the London bus network. Clauses 8 to 10 contain powers to alter both the national concession and voluntary travel concessions. Clauses 11 to 16 deal with miscellaneous items such as interpretation and the manner in which the Secretary of State can exercise his powers under the Bill.

TERRITORIAL APPLICATION: WALES

10. The Bill replaces the section of the Transport Act 2000 which contains the current mandatory bus travel concession for Wales and (most of) England with two new sections. One section provides for the new national concession for England (for journeys beginning outside the London bus network); the other restates the existing concessionary scheme in Wales.
11. The only significant change to the legislation which might affect Wales is the inclusion of order-making powers enabling the Welsh Ministers and the Secretary of State to require, in their respective territories, the recognition of concessionary passes issued under each other's concessionary regimes, and those of Scotland and Northern Ireland. These powers could be used once all parties had agreed the practical arrangements of a reciprocal United Kingdom wide scheme. The Welsh Ministers' powers include power to adjust the way in which bus operators are reimbursed under the Welsh scheme, so that they can be reimbursed for carrying concessionaires from outside Wales.

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12. The Bill does not change the way the current Welsh scheme operates, nor does it affect the National Assembly's existing powers to alter the scope of the scheme.

TERRITORIAL EXTENT

13. The Bill extends to England and Wales only.
14. Because the Sewel convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if amendments were made that related to such matters the consent of the Scottish Parliament would be sought for them.

National concession: journeys not beginning on London bus network

15. The national concession will be available across England, but the Bill deals separately with journeys beginning outside the London bus network and those beginning on the London bus network. This is because non-London and London services are already subject to different legislative and administrative arrangements (see paragraph 4). Clauses 1 to 3 deal with journeys not beginning on the London bus network.

Clause 1: The national concession

16. Clause 1 replaces s145 of the Transport Act 2000 with a new section 145A establishing the new national concession in England on 'eligible journeys' (i.e. single bus trips between places in England which are made at the relevant times and which do not begin on the London bus network)³. The new s145A is drafted to remove the restriction that a journey must be within a person's local authority area in England for the concession to be available to them. This is done by providing that any England resident pass holder can receive the concession on 'eligible journeys' on eligible bus

³ This will include also some journeys which begin outside London and end inside Greater London on the London bus network. The 'London bus network' is defined in the Greater London Authority Act 1999, broadly to mean certain local services procured by Transport for London to the extent that they are within Greater London. Some services procured to make up the London bus network do, in fact, cross over the London border into surrounding areas. Because journeys on these cross border services which begin outside London but end in London on the London bus network are covered by the provisions of the new s145A, concessions on them are funded by the travel concession authority in which the journey begins (consistent with the rest of the country).

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services⁴. Since the concession is now available anywhere in England, rather than only within local authority areas outside London, the concession will be available for the first time on eligible commercial services (i.e. London service permit services) in Greater London.

17. The arrangements for concessionary travel in Wales that were formerly included in s145 of the Transport Act 2000 have been re-stated in Schedule 2 as new s145B of that Act.
18. New wording at s145A(4) of the Transport Act 2000 secures that travel concession authorities in England (other than in London) must issue permits to older or disabled persons 'whose sole or principal residence' is in the travel concession authority's area. The Secretary of State is also given a power to issue guidance to travel concession authorities as to how they should interpret 'sole or principal residence'. This is intended to promote the adoption of a consistent approach. London residents receive passes under the London arrangements set out in the Greater London Authority Act 1999. Under new s145A those passes will be valid outside London (see paragraph 19).
19. There is also a power at new s145A(5) for the Secretary of State to make regulations as to what a permit issued by a non-London travel concession authority must look like. This is so that the appearance of cards across the country can be standardised in an agreed form that is easily recognised by bus drivers. As before, a person can give up the national concession in exchange for other concessionary travel benefits offered by their local authority under voluntary schemes administered under s93 of the Transport Act 1985.

Clause 2: The national concession: supplementary

20. Travel concession authorities under ss145 to 149 of the Transport Act 2000 are responsible for issuing passes to their residents, reimbursing operators providing the national concession, and enforcement of the national concession. At present, with respect to England they are defined in s146 of the Transport Act 2000 as non-metropolitan district councils, county councils (so far as there is no district council for an area), and Passenger Transport Executives for passenger transport areas. Clause 2 amends this definition of 'travel concession authority,' adding 'London authority' (London borough councils, the Common Council of the City of London) and the Council of the Isles of Scilly. This means that London authorities will need to

⁴ Concessions on journeys on the London bus network and those which begin on the network and end outside London will be provided for under the Greater London Authority Act 1999, and so will be funded by London authorities (in accordance with the general principle that the national concession will be funded by the local authority in whose area the relevant journey begins).

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reimburse the operators of London service permit services for their provision of the national concession on 'eligible services' (see paragraph 4). London authorities will not issue permits under this Act, as permits issued to London residents under the Greater London Authority 1999 Act will be used by London residents to access the national concession outside London (see new s145A(3)). Although there are no eligible services on the Isles of Scilly, making the Council of the Isles of Scilly a travel concession authority will enable residents to obtain a national concession pass to use on the mainland (see s145A(4)).

Clause 3: Reimbursement of operators

21. This clause makes provision for operators providing the national concession to England residents to be reimbursed by the travel concession authority for the area in which the journey began. This replaces the requirement for English travel concession authorities to reimburse operators only for journeys made wholly in their area by concessionaires resident in their area. Existing reimbursement provisions in respect of the Welsh concession are restated with no substantive change.

22. There is also a change to the deadline by which bus operators may appeal against reimbursement arrangements regarding their provision of the national concession, under s150(3) of the 2000 Act. Clause 3(4) to (6) amends s150(4) of the 2000 Act and adds a new s150(4A) to secure that the deadline for lodging such appeals in respect of reimbursement arrangements determined by English travel concession authorities is extended from 28 days to 56 days. Existing arrangements in respect of appeals against reimbursement arrangements set by Welsh authorities are restated with no substantive change.

National concession: journeys beginning on London bus network

Clause 4: The national concession: journeys beginning on London bus network

23. Section 240 of the Greater London Authority Act 1999 enables local authorities (inside London and out) to enter into arrangements under which travel concessions can be offered to certain types of people and on certain modes of public transport (including the London bus network). If these voluntary agreements do not fulfil certain criteria (including the provision of concessions described at s242(8) of the Act), then a 'reserve free travel scheme' will instead operate (see paragraph 24). This clause alters section 240 to ensure that those resident outside London and holding permits issued by travel concession authorities under the Transport Act 2000 can be recognised as a category of persons eligible under a concessionary scheme set up under arrangements made under that section. It also ensures that London authorities will issue passes only to those whose 'sole or principal residence' is in their area and that London authorities must have regard to any guidance on 'sole or principal residence' that is issued by the Secretary of State.

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Clause 5: Reserve free travel scheme and Clause 6: Requirements as to scope

24. Section 241 of the Greater London Authority Act 1999 currently provides, amongst other things, that if (in the view of Transport for London) voluntary arrangements made between it and local authorities under s240(1) of that Act do not provide certain minimum travel concessions to eligible London residents, then a ‘reserve free travel scheme’ will come into effect which ensures these concessions and others. The terms of the reserve free travel scheme are contained in Schedule 16 to the Greater London Authority Act 1999. Clauses 5 and 6 amend those ‘minimum concessions’ (set out in s242 of the 1999 Act) which must be secured under the s240(1) arrangements, so that they include the national concession for all England residents travelling on journeys which begin on the London bus network, whether or not they end on it.⁵ The changes also ensure London residents continue to benefit from the enhanced concessions currently guaranteed under s242(8) of the Greater London Authority Act 1999.

Clause 7: Requirements as to uniformity

25. This clause amends s243 of the Greater London Authority Act 1999, to include permits issued by travel concession authorities under s145A(4) Transport Act 2000 (i.e. non-London permits) within the section’s requirement that enjoyment of the national concession on the London bus network is conditional on showing a permit. The clause also confers a power for the Secretary of State to stipulate the form and period of validity of passes issued under s240(1) arrangements.

Power to alter national concession etc

Clause 8: Variation of scope of the national concession

26. This clause secures that the Secretary of State can amend relevant parts of the Transport Act 2000 and the Greater London Authority Act 1999 by order to expand the scope of the national concession in the ways stated. Elements of this power already existed under s147 Transport Act 2000 in respect of the previous concession available outside London, and have been restated so that any amendment to the national concession can be synchronised both inside and outside Greater London. The

⁵ That is, journeys on relevant local services not covered by the Transport Act 2000. Concessions on journeys which cross the boundary of Greater London going out of London (and so which, technically, begin on the London bus network but do not end on it) are catered for, as these journeys are funded by Transport for London as part of the London bus network, and so concessions on them will be funded by London authorities, rather than by the bordering local authorities. At the moment only those parts of London bus network services that are within Greater London are caught within the Greater London Authority Act 1999 concessionary regime. Parts falling outside Greater London are seen as separate services which, without special provision being made for them, would fall within the Transport Act 2000 regime, and so have to be funded by the relevant travel concession authority under that Act.

Secretary of State could use these powers, for example, to extend the national concession to any further categories of people who are eligible to be offered concessions under voluntary concessionary schemes set up under s93 of the Transport Act 1985, or to other modes of public passenger transport. There is also a new power to provide that a concession other than a waiver of the fare (e.g. a discount) can be offered to any new class of person made eligible for the national concession by order under this section. Concessions offered to such new categories of people can also be offered at any times specified, and those offered to people currently eligible can be made available at more (but not less) generous times.

Clause 9: Variation of reimbursement and other administrative arrangements

27. This clause allows the Secretary of State, by order, to centralise reimbursement and/or other administrative functions of English travel concession authorities under ss145 to 150 Transport Act 2000. The other administrative functions are the issuing of permits and enforcement powers. The clause states that the centralisation can be carried out by way of transfer of these functions from non-unitary non-metropolitan district councils to the relevant county councils, or simply by way of transfer of the functions to the Secretary of State. An order under which travel concession authority functions are transferred to the Secretary of State can include consequential provisions which, inter alia, alter the way in which reimbursement appeals are dealt with, for example by setting up a body to hear appeals against the Secretary of State. Currently the Secretary of State hears these appeals. It is intended that any order made under this power would be accompanied by the appropriate regulatory impact assessment ('RIA') and would be the subject of extensive consultation.

28. In the event that an order under clause 9(1)(a) or (2)(a) is made, transferring responsibility for reimbursement to the Secretary of State or county councils, the Secretary of State may, under clause 9(5), also streamline the administration of discretionary travel concession schemes under s93 of the Transport Act 1985. The Secretary of State can do this either by removing from non-unitary or metropolitan district councils their functions in making s93 schemes; or by providing that they may only make such schemes if they do so jointly with the county council or Passenger Transport Authority for their area. In such circumstances, the order may include provisions stipulating that the relevant upper tier authority be responsible for certain functions in running such schemes, so that, for example a county council might be made responsible for reimbursement functions.

Clause 10: Reciprocal arrangements for providing travel concessions

29. This clause enables England and Wales to recognise each other's passes and those of Scotland and Northern Ireland. This is likely to be used at such a time as all parties have agreed the practical issues surrounding mutual recognition of passes across the United Kingdom, including funding. The drafting allows the Secretary of State and

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Welsh Ministers flexibility in deciding which categories of concessionaire will receive which kinds of concession in England and Wales respectively, which may be useful in view of the differences between the national schemes.

30. Welsh Ministers' power to provide for recognition of English, Scottish and Northern Ireland passes includes, under clause 10(5), power to provide for bus operators to be reimbursed for journeys by holders of non-Welsh permits which begin within Welsh travel concession authority areas. This would be necessary when, for example, holders of English permits were making use of them to travel within Wales. There is also provision at clause 10(4) to deal with the geographical overlap of schemes on introduction of any reciprocal arrangements, arising from the fact that, at present, the Welsh scheme includes some services in England. This is to avoid problems of double reimbursement.

Miscellaneous and supplemental

Clauses 11 and 13: Orders and minor and consequential amendments

31. Clause 11 stipulates that all powers of the Secretary of State and Welsh Ministers to make orders under the Bill are exercisable by statutory instrument. A statutory instrument containing an order under clause 8 (i.e. an order amending the scope of the concession in England) is subject to negative resolution procedure. This mirrors the procedure that applies to the existing equivalent order-making powers under s147 of the Transport Act 2000.
32. Orders made by the Secretary of State under clauses 9 (varying reimbursement and other administrative arrangements), 10 (allowing for recognition of Welsh, Scottish and Northern Irish Permits in England), and 13 (consequential amendments) of the Bill will be subject to the affirmative resolution procedure, as will orders made by Welsh Ministers under clause 10 (allowing for recognition of English, Scottish and Northern Irish Permits in Wales). This means that the order cannot be made unless a draft of the statutory instrument has been approved by both Houses of Parliament (in the case of England) or the National Assembly (in the case of Wales).
33. Clause 13 contains a power for the Secretary of State to make changes to enactments existing when the Bill is passed. Such changes are limited to those which appear to him to be appropriate 'in consequence' of the Bill and (as mentioned above) are subject to affirmative resolution.

Clause 15: Commencement, transitional provisions and savings

34. Clause 15(3) preserves for the Welsh Ministers the National Assembly of Wales' current power to the reverse or amend the effects of a statutory instrument previously made by it that extended the scope of travel concessions available in Wales. More specifically, in 2001, the National Assembly made the Travel Concessions

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(Extension of Entitlements) (Wales) Order 2001 (SI 2001/3765). Elements of this are now enshrined in the Bill. For example, the effect of amendments made to s145 by the 2001 order to provide that a permit issued by a Welsh travel concession authority has effect in Wales generally rather than just in a travel concession authority area is now recreated in the new s145B. This restatement of the law effectively revokes the provisions of the statutory instrument (which amends a section that no longer exists) and would normally remove the ability of the Welsh Ministers to reverse or amend the effects of the statutory instrument by revoking or amending the instrument themselves. However, clause 15(3) ensures that the Welsh Ministers retain equivalent revocation and amendment powers.

Schedule 1: The London free travel scheme

35. This Schedule amends Schedule 16 to the Greater London Authority Act 1999 to ensure all eligible residents in England, on production of the required permit, are given free bus travel as part of the London reserve free travel scheme (see paragraph 24). It also allows for the existing ‘additional’ concessions to London residents to be preserved, in the same way that residents of local authority areas outside London may benefit from added local concessions offered under voluntary concessionary travel schemes set up by local authorities under s93 of the Transport Act 1985.

Schedule 2: Minor and consequential amendments

36. Paragraphs 2, 3 and 4 make changes to the Transport Act 1985 to ensure there are no unintended substantive changes to the law as a result of the replacement of s145(1) Transport Act 2000 by s145A(1) and s145B(1). Paragraph 10 inserts in the Transport Act 2000 the new s145B, which restates the national concession currently available in Wales. Paragraph 12 ensures that the s147 powers held by the National Assembly for Wales to vary the concession refer to the new section 145B.

PUBLIC SECTOR FINANCIAL COST AND PUBLIC SECTOR MANPOWER IMPLICATIONS

37. The cost to the Government of introducing the improved entitlement within England, from April 2008, is approximately £250m⁶ per annum, which the Government committed to fund in the 2006 Budget report. This is in addition to the funding already available for the existing concessionary fares statutory minimum entitlement, provided to local authorities in England via formula grant, operated by the Department for Communities and Local Government (‘DCLG’).

⁶ This includes Barnett consequentials.

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38. The Bill includes powers to change the mechanism for reimbursing operators and to enable streamlining of the administration of concessionary fares, potentially reducing the burden on local authorities and creating efficiency savings. The power is exercisable by order. Any order made would be accompanied by the appropriate RIA and would be the subject of extensive consultation.
39. The Bill would extend the minimum concession to eligible London service permit bus routes in London (at present approximately 30 of which are local bus services), which are not part of the London bus network and not currently obliged to offer any concession to older and disabled people. Local authorities in whose areas these routes operate will become responsible for calculating reimbursement for the operators. This will create some extra work for the London local authorities involved, but it is likely that much of this will be done on their behalf by 'London Councils'⁷, reducing the burden. There should be little effect on public service manpower in London.
40. Further consideration will need to be given to this issue should the power to change the method of reimbursement be used in the future.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

41. A draft RIA for the Bill has been prepared. The new concession is not expected to have significant cost implications for the industry as reimbursement outside London is based on the principle that operators should be 'no better and no worse off' as a result of giving concessionary travel. Most operators inside London provide concessions under contract and have no claim on fare revenue. The draft RIA will be updated during the passage of the Bill.
42. Although the Bill will allow for the mechanism of reimbursement to be changed in the future – potentially offering efficiency savings to industry, local authorities and Government – a separate RIA would accompany any order made under this power (as referred to at paragraph 26).
43. The full draft RIA is available on the Department for Transport's website (at www.dft.gov.uk/localtransport/cbtbill) or by contacting James Robinson, Concessionary Travel Division, Zone 3/11, Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR. Email enquiries should be directed to cbtbill@dft.gsi.gov.uk.

⁷ 'London Councils' is the new name for the Association of London Government and is a committee appointed under s101 Local Government Act 1972.

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EUROPEAN CONVENTION ON HUMAN RIGHTS

44. The provisions in the Bill are compatible with the Convention and it is not thought that any Convention rights are engaged here. The Secretary of State for Transport has made a statement to that effect.
45. More specifically, it is not thought that protocol 1 article 1 (the right to peaceful enjoyment of property) would be infringed with respect to operators being obliged to provide the national concession by s145A(1) of the Transport Act 2000 (and so forgo the fare income they would have made if they had not provided the concession) since s149 of that Act provides for operators to be reimbursed for this by the relevant travel concession authority. This right to reimbursement existed before the Bill and has not been amended (except to provide that it is the authority in which the journey began which will reimburse the operator).
46. Neither is it considered that Article 6 (the right to a fair hearing in the determination of civil rights) is infringed here with respect to the determination of reimbursement arrangements by travel concession authorities under the Transport Act 2000. There is a right, under s150 of that Act, for an operator to appeal to the Secretary of State if he believes he is prejudicially affected by any proposed reimbursement arrangements. The Secretary of State would be an independent and impartial appeal body here, and if he does not deal with these appeals fairly, his decision will be subject to judicial review. This appeal mechanism existed before the Bill and its principle will not be amended by the Bill on commencement. The new power at clause 9(1) for the Secretary of State to take over the function of reimbursing operators from travel concession authorities under the Transport Act 2000 is coupled with a power to make alterations to this appeals mechanism. Such alterations may, for example, include a mechanism for appeal to an independent body against reimbursement arrangements determined by the Secretary of State. The provision of an appeal mechanism in this way would most likely be necessary if the determination of operators' civil rights in this arena are to meet the fairness requirements of Article 6. However, it is not considered that the requirements of Article 6 make it necessary to include the appeal mechanism on the face of the Bill. The duty in s6 of the Human Rights Act 1998 that a public body must act in accordance with Convention Rights, and normal requirements of administrative decision making, render it unlikely that any centralised regime which is not in compliance with Article 6 would be introduced.

COMMENCEMENT

47. The provisions of the Bill will come into force on a day or days to be appointed by order made by the Secretary of State.

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