

EXPLANATORY MEMORANDUM TO
THE PASSENGERS' COUNCIL (NON-RAILWAY FUNCTIONS) ORDER 2010
2010 No. 439

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

2. Purpose of the instrument

2.1 This Order will extend the remit of the Rail Passengers' Council (the Council), the statutory rail passenger watchdog commonly known as Passenger Focus, so that it can act as the statutory representative for bus, coach and tram passengers in England (outside London). It will also change the name of the Council to 'the Passengers Council', to reflect its new responsibilities, and make some changes to its constitution.

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

3.1 None

4. Legislative Context

4.1 The Council has been representing rail passengers in its current form since July 2005, although it has existed in other forms since 1947. Its duties and powers are set out in sections 76 and 76A of the Railways Act 1993 as amended, and sections 19 to 21 of, and Schedule 5 to, the Railways Act 2005.

4.2 The Local Transport Act 2008 amended the Railways Act 2005 to empower the Secretary of State, through secondary legislation, to confer additional functions on the RPC to represent the interests of bus, coach and tram passengers in England. The Order amends the Transport Act 1985 (the 1985 Act) to confer these additional functions on the Council.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain but has effect only in England.

6. European Convention on Human Rights

The Minister of State for Transport, Sadiq Khan, has made the following statement regarding Human Rights:

In my view the provisions of the Passengers' Council (Non-Railway Functions) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 Two thirds of all public transport journeys are made by bus – over 4 billion journeys every year. However, at present, there is no formal body representing the interests of bus passengers in England, outside London. This contrasts with the situation in the rail sector, where the Council is an independent body established to protect the interests of rail passengers.

7.2 The Order extends the Council's remit to cover road passenger transport services and road passenger transport facilities in England. 'Road passenger transport services' are defined as local bus services, domestic coach services and tramway passenger services. Services operated by community transport organisations authorised by permits issued under section 22 of the 1985 Act would be included within the Council's remit since they are local bus services. The definition excludes excursions and tours as they do not come within the definition of public passenger transport services, and services operated under permits issued under section 19 of the 1985 Act, which are not available to members of the general public. The term 'road passenger transport facilities' includes bus, coach and tram stations and stops.

7.3 The Council will investigate bus, coach and tram matters referred to it by passengers, passenger representative bodies or the Secretary of State. It will also be able to investigate matters of its own volition, and have the power to seek information from bus, coach and tram operators and bodies responsible for providing passenger transport facilities.

7.4 Following an investigation, the Council would have the powers to make representations to bus, coach and tram operators, bodies responsible for providing passenger transport facilities, local traffic authorities, local transport authorities and the Highways Agency. Those bodies would have to have regard to those representations and send a written response to the Council within a reasonable time. Where it believed it was appropriate to do so, the Council would be able to refer matters regarding buses and coaches to the traffic commissioners for them to consider taking action. As there is no direct equivalent of the traffic commissioners for tram operations, the Council will be able to refer matters to the promoter of each tram system.

7.5 There is already a statutory body, the London Transport Users Committee (known as London TravelWatch) which represents passengers of services operated, procured or licensed by Transport for London. London TravelWatch will continue to be responsible for representing these passengers. The Order provides that the Council will be able to consider bus and tram issues in London only where these form part of its consideration of a matter relating wholly or mainly to an issue outside London.

7.6 The Order also makes a number of amendments to the constitution of the Council. It will change the Council's statutory name to 'the Passengers Council' to reflect the fact that its remit will extend beyond rail services. It will also increase the maximum number of members that can be appointed to the board of the Council by the Secretary of State following consultation with the Chairman, from twelve members to fourteen, so that additional members can be added to the board if necessary in light of its expanded remit.

7.7 The Council is able to hold board meetings in private if necessary so that information provided in confidence by the Office of Rail Regulation or Secretary of State for Transport can be discussed. The Order will extend this provision to include information provided by the traffic commissioners. It will also enable the Secretary of State to ask the Council to establish committees to advise him on any specific function or all of its functions in relation to rail, bus, coach or tram matters.

8. Consultation outcome

8.1 As part of the consultations on the Government's proposals for the draft Local Transport Bill and on the reform of the traffic commissioners (who are responsible for regulating bus services), the DfT received feedback which suggested that the lack of a nationally recognised body to represent passengers' interests and to hold industry to account contributed to a failure to address poor bus services.

8.2 The DfT issued a consultation document in December 2007 on "Options for Strengthening Bus Passenger Representation" (<http://www.dft.gov.uk/consultations/archive/2008/buspassenger>). Responses to the consultation showed support for the creation of a bus passenger representative body with statutory powers. The most popular option was that the Council should take on the role, rather than establishing a new public transport users committee, because of its experience in the rail sector and the potential economies of scale of a combined passenger representative body. Some responses to the consultation also suggested that it would be appropriate for the Council to represent tram passengers in England outside London since there was no statutory body representing them while the Council would be representing bus, coach and rail passengers.

8.3 In April 2008, following the close of the consultation, Ministers announced that, subject to Parliamentary approval, the remit of the Council would be widened to represent bus and coach passengers (<http://nds.coi.gov.uk/clientmicrosite/Content/Detail.aspx?ClientId=202&NewsAreaId=2&ReleaseID=364855&SubjectId=36>). In November 2008, Ministers announced that further consultation would take place on giving the Council a role representing tram passengers (<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81118-0011.htm>). Powers were secured in the Local Transport Act 2008 to enable the Secretary of State, through secondary legislation, to confer functions on the Council in respect of bus, coach and tram services and facilities in England.

8.4 A consultation exercise on the draft Order was held between 16 July and 8 October 2009. DfT has published a summary of the responses and its response to the issues raised during the consultation on its website (<http://www.dft.gov.uk/consultations/closed/passenger-focus-remit>). 37 responses were received. The consultation reaffirmed support for giving the bus and coach remit to the Council. It also endorsed the proposition that the Council should represent tram passengers, with over 80% of respondents supporting the proposal. Consultees also agreed that it was appropriate to include in the Council's remit those community transport services which are operated under section 22 permits, since these are available to the general public.

8.5 There was strong support for the Council to have information gathering powers, backed by the ability to refer matters to the traffic commissioners for bus services, or the relevant promoter for tram systems. To meet the concerns of operators about the treatment of confidential information supplied by them to the Council, the Order includes a provision setting out that information would not be published or made available by the Council if a person would not be entitled to the information by virtue of the exemptions in section 41 or 43 of the Freedom of Information Act 2000. The Council will remain able to disclose the information to a court or tribunal, or as part of a referral to a traffic commissioner or tramway promoter.

8.6 There was widespread support for the Council to have the power to make representations to the traffic commissioners regarding bus and coach matters, as the traffic commissioners have powers to enforce and penalise which the Council does not have. However, in accordance with the responses received, the final decision on whether any action might be necessary will remain with the traffic commissioners, who remain responsible for operator licensing, punctuality and vehicle functionality issues. For tram services, the preferred option was to give this role to tram scheme promoters since the traffic commissioners' enforcement powers do not extend to trams.

8.7 Respondents felt that the consultation draft of the Order did not accurately capture the existing remit of London TravelWatch, as it was based on a geographical definition of London, rather than the provision of services by Transport for London. This has been addressed following further discussions with the Council and London TravelWatch.

8.8 The consultation also indicated that some stakeholders had concerns about how the bus industry handles complaints from passengers. If a passenger has a complaint about a bus service, they should complain in the first instance to the operator. However, if they are then unhappy with the response they have received, or the way their complaint was handled, they have a right of appeal to the independent Bus Appeals Body. Some respondents argued for the Council to be given a role in handling complaints appeals, whilst others thought that the existing Bus Appeals Body should continue to have this role. The Council itself thought that industry should be given time to improve the complaints handling procedures. For trams, while many respondents felt that the Council would be best placed to fulfil the appeals role, a number disagreed and thought that the Bus Appeals Body should be expanded to take on this role. We therefore propose that the Council will work closely with the bus industry during 2010 to bring about improvements in complaints handling and an increase in the capacity of the Bus Appeals Body. We also propose that it should work with the tram industry to establish how existing arrangements are working and identify any problems or gaps, setting out options for improvements if needed. The Order has been drafted to empower the Council to take on an appeals role for buses and trams if this is subsequently deemed desirable.

9. Guidance

9.1 DfT does not intend to issue specific guidance to accompany this Order. However, it will update the Council's existing framework document to set out how it expects the Council to approach bus, coach and tram issues and the need to work

collaboratively with operators and local authorities. DfT will also incorporate advice on co-operating with the Council into existing guidance documents issued to the bus industry.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

10.2 The impact on business, charities, voluntary bodies and the public sector is expected to be minimal. Responding to a representation from the Council should be no different to replying to a representation from any other stakeholder and should represent 'business as usual' for a local authority.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 As part of its Impact Assessment on the Order, DfT considered whether it would be appropriate to exclude small business from the Council's remit. However, excluding services operated by small business would not achieve the policy aim of ensuring all bus, coach and tram passengers received statutory representation.

12. Monitoring & review

12.1 The changes set out in the Order aim to provide bus, coach and tram passengers with statutory representation. The policy will be reviewed as part of the wider post-legislative scrutiny of the Local Transport Act 2008.

13. Contact

Nathan Cole at the Department for Transport Tel: 020 7944 2274 or e-mail: nathan.cole@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of granting statutory powers to Passenger Focus to represent bus, coach and tram passengers	
Stage: Final	Version: 2	Date: 5 January 2010
Related Publications: Consultation on Regulations to extend the remit of the Rail Passengers' Council and a requirement to display information.		

Available to view or download at:

<http://www.dft.gsi.gov.uk>

Contact for enquiries: Nathan Cole

Telephone: 020 7944 2274

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

Unlike rail passenger transport, there is currently no national statutory representative body for bus, coach and tram passengers. Feedback as part of the consultations on the Government's proposals for the draft Local Transport Bill (now the Local Transport Act 2008) and reform of the Traffic Commissioners (the bus regulator) was that the lack of a nationally recognised body to represent passengers' interests and to hold industry to account contributed to a failure to address poor bus services. Secondary legislation is required to extend Passenger Focus' remit to bus, coach and tram issues.

What are the policy objectives and the intended effects?

The aim of the policy is to provide bus, coach and tram passengers with statutory representation. Passenger Focus would be able to investigate bus, coach and tram matters referred to it by the Secretary of State, passengers and passenger representative bodies. Following an investigation, they would have the powers to make representations to providers of road passenger transport services and facilities, local traffic authorities, local transport authorities, tram scheme promoters and the Highways Agency.

What policy options have been considered? Please justify any preferred option.

Option A - Passenger Focus (the Council) is given statutory powers to represent bus, coach and tram passengers.

Option B - do nothing

Other options were considered as part of the "Options for Strengthening Bus Passenger Representation" consultation in 2008.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

As part of the wider post-legislative scrutiny of the Local Transport Act 2008, in accordance with "Post Legislative Scrutiny - The Government's Approach" (March 2008, Cm 7320).

Ministerial Sign-off For final stage Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Sadiq Khan**Date:** 16th December 2009

Summary: Analysis & Evidence

Policy Option: A	Description: Passenger Focus (the Council) is given statutory powers to represent bus, coach and tram passengers
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
£ 0	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups' Operators & local authorities will incur costs in responding to representations made by Passenger Focus. Responding to these should be no different to replying to representations from any other stakeholder and should represent 'business as usual'. We do not expect representations to increase significantly.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs	
	£ 0	
	Average Annual Benefit (excluding one-off)	
£ 0	Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups' Bus, coach and tram passengers will receive statutory representation from Passenger Focus, which should lead to improvements to bus services.		

Key Assumptions/Sensitivities/Risks We do not expect representations from Passenger Focus to increase significantly.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England (not London)
On what date will the policy be implemented?	April 2010
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Minimal Small Minimal Medium Minimal Large Minimal
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £ Minimal positive

Key: Annual costs and benefits: (Net) Present

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Introduction

1. Two thirds of all public transport journeys are made by bus, well over four billion journeys in England every year. However, at present there is no statutory national body to represent the interests of bus passengers in England outside London, although there are a number of non-statutory groups that deal with bus travel. These include, amongst others, Bus Users UK, the Bus Appeals Body and various TravelWatch organisations.
2. Feedback as part of the consultations on the Government's proposals for the draft Local Transport Bill and on the reform of the Traffic Commissioners ("TCs" - the bus regulator) was that the lack of a nationally recognised body to represent passengers' interests and to hold industry to account contributed to a failure to address poor bus services.
3. In light of the feedback to the consultations, the Government decided to establish a bus passenger representative body. To allow for this, provisions were secured in the Local Transport Act 2008, which would enable the Secretary of State through secondary legislation, either to set up a new Public Transport Users' Committee for England or to confer additional functions relating to buses and coaches in England onto the existing Rail Passengers' Council ("the Council", operating as Passenger Focus).
4. A further consultation, 'Options for Strengthening Bus Passenger Representation', was held to gather views on four options to strengthen the voice of bus passengers at a national level. The options were:
 - working with existing bus passenger bodies;
 - a new standalone statutory bus passenger champion;
 - extending the powers of the Council; or
 - establishing a new statutory multi-model Public Transport Users' Committee.
5. There was clear support for a body with statutory powers and the predominant view was that the Council should take on the role of bus passenger champion, to complement their existing work representing rail passengers. As a result, on 8 April 2008, the Secretary of State announced that the remit of the Council should be widened to give it statutory powers in relation to bus and coach passengers. Subsequently, the Department and the Council agreed its functions and remit in relation to bus and coach issues, and that it would start working on these, in shadow form, from April 2009.
6. A number of respondents to the consultation on strengthening bus passenger representation highlighted the importance of ensuring a statutory voice for tram passengers, as well as for bus passengers. In light of this, a government amendment to the Local Transport Bill was tabled and accepted, enabling the Secretary of State to confer powers on the Council to act as the statutory representative body for tram passengers as well. In November 2008, Ministers announced that further consultation would take place on giving the Council a role representing tram passengers. This consultation was held during summer 2009 and showed clear support for giving this role to the Council.
7. *The Passengers' Council (Non-Railway Functions) Order* extends the Council's remit to cover bus, coach and tram issues. The Order is required to confer on the Council obligations in terms of bus, coach and tram matters and to place responsibilities on others in terms of how they respond to the Council.

Preparation of the Impact Assessment

8. The Order and impact assessment were consulted on during summer 2009 and have been amended in the light of comments received. It is proposed that the Order will come into force by April 2010.

Options

A Passenger Focus (the Council) is given statutory powers to represent bus, coach and tram passengers

9. Responses to the consultation on "Options for Strengthening Bus Passenger Representation" showed clear support for a body with statutory powers and the predominant view was that the Council should take on the role representing bus and coach passengers. Similarly, the further consultation in summer 2009 showed strong support for the Council having a role representing tram passengers.
10. The draft Order would grant the Council the statutory powers required to represent bus, coach and tram passengers. The Council can conduct research and make representations as to how conditions and services for passengers may be improved. It will also be under a duty to review matters relating to the provision of bus, coach and tram passenger services and facilities. The Council will have the power to investigate matters referred to it by passengers, potential passengers and representative organisations, or the Secretary of State.
11. Following an investigation, the Council would have the powers to make representations to bus, coach and tram operators, bodies responsible for providing passenger transport facilities, local traffic authorities, local transport authorities and the Highways Agency. Those bodies would have to have regard to those representations and send a written response to the Council within a reasonable time.

B Do nothing

12. Although this option would not require legislation, it would not meet the concerns raised by Parliament during the passage of the Local Transport Bill, by stakeholders during the consultation on the Bill and the "Options for strengthening bus passenger representation" consultation, or during the "Extension of the remit of Passenger Focus to bus and coach issues and the requirement to display information" consultation.

Analysis of impacts

Groups and Sector affected

13. The bus and coach industry includes over 9000 operators with around 95% of these operators having 20 vehicles or less, with an average fleet of about 10 vehicles. All operators of regular bus and coach services in England, outside London, will fall within the remit of the Council. Its remit will therefore cover 2.6 billion bus and coach journeys a year, making up two-thirds of all public transport journeys.
14. There are five tram systems in England, outside London. These are in Blackpool, Manchester, Nottingham, Sheffield and the West Midlands (the Tyne and Wear Metro is regarded as a light rail system is already within the remit of the Council). There are 53 million journeys per year on the five tram systems.
15. DfT has considered whether it would be appropriate to exclude small firms from the Council's remit. However, if services operated by small firms were excluded, the policy aim of ensuring all bus, coach and tram passengers had statutory representation would not be achieved. We believe that the provisions in the Order should have no impact on small firms' ability to continue operating.

Costs

A Passenger Focus (the Council) is given statutory powers to represent bus, coach and tram passengers

16. There would be a small cost to operators and local authorities in responding to representations made by the Council. The response to the consultation did not suggest that these would be significant and the Council is already working on bus and coach issues in shadow form. We expect the Council to work collaboratively with stakeholders. Responding to a representation from the Council should be no different to replying to a representation from any other stakeholder and should represent 'business as usual' for an operator or authority. The Order requires that any request for information by Passenger Focus should not impose an unreasonable burden on its recipient.

B Do nothing

17. There would be no costs to operators or authorities associated with this option. However, there would be costs to passengers as they would not benefit from a national voice seeking to secure journey improvements on their behalf.

Benefits

A Passenger Focus (the Council) is given statutory powers to represent bus, coach and tram passengers

18. Bus, coach and tram passengers will receive statutory representation for the first time. The Council's ability to carry out research and make representations about bus, coach and tram issues should lead to improved services for passengers. Some benefits would also accrue to operators who would benefit from the Council's research; for example, the Council carries out research into passenger priorities, which will be a useful source of information for operators in attracting and retaining customers. Making bus services more attractive to passengers should lead to increased patronage and revenue gains for operators. However, the monetary value of these benefits cannot be quantified realistically at this stage.

B Do nothing

19. If no change is made to the current arrangements, bus, coach and tram passengers would continue to have no statutory representation, and would receive no benefits. They would miss out on potential improvements to services highlighted by the Council's research. Although operators would not have the minor cost of responding to any representations, they would also miss out on any research findings which could improve their services and potentially increase patronage. Local authorities would also receive no benefits.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Competition Assessment

There should be no impact on competition as all operators will be treated in the same manner.

Small Firms Impact Test

No significant impact on small operators is envisaged. The draft Order should have no impact on small firms' ability to operate.

Legal Aid Impact Assessment

No legal aid impact is envisaged.

Sustainable Development/Carbon Assessment/Other Environment Impact Assessment

Improvements to bus services resulting from a representation by the Council may create increases in bus and coach patronage. Option A may therefore result in a reduction in the use of private cars, which could have some environmental impacts. However, it is not thought that this would be substantial enough to have any significant impact.

Health Impact Assessment

No impact on health is envisaged.

Race Equality/Disability Equality/Gender Equality

No impact on race, disability and gender equalities is envisaged.

Human Rights

No human rights impact is envisaged.

Rural Proofing

No specific rural issues have been identified.