

Guidance for Travel Concession Authorities on the England National Concessionary Travel Scheme

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Department for Transport
Great Minster House
76 Marsham Street
London SW1P 4DR
Telephone 0300 330 3000
Website www.dft.gov.uk

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Introduction

- 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.
- 2.** The scheme is enshrined in Primary Legislation through the Greater London Authority Act 1999 and the Transport Act 2000 (as modified by the Concessionary Bus Travel Act 2007).
- 3.** Concessionary travel is administered locally by Travel Concession Authorities (TCAs). Until 31 March 2011 the following local authorities are classed as TCAs: Shire District Councils, Unitary Authorities, Passenger Transport Executives and London Boroughs. Following a consultation in 2009, an Order under section 9 of the Concessionary Bus Travel Act 2007 was approved by Parliament in March 2010, which shifts responsibility for administering concessionary travel schemes from lower tier local authorities to upper tier local authorities. Consequently from 1 April 2011 the following authorities will be TCAs: County Councils, Unitary Authorities, Passenger Transport Executives and London Boroughs.
- 4.** In addition to the mandatory bus concession TCAs are also able to make use of powers provided by the Greater London Authority Act 1999 and the Transport Act 1985 to offer discretionary concessionary travel schemes.
- 5.** This guidance note is designed to assist TCAs in administering the England National Concessionary Travel Scheme (ENCTS). Section 1 of the guidance provides details of the key information that all TCAs need to know about in administering the ENCTS and provides links to other guidance documents issued by the Department for Transport (DfT) in relation to the scheme. Section 2 focuses on the shift in responsibility for administering the scheme from lower tier local authorities to upper tier local authorities and provides advice on how to handle a number of specific transitional issues.
- 6.** This guidance applies only to England. Concessionary travel is a devolved policy area, and legislation and assessment of eligibility with regard to concessionary travel in Wales, Scotland and Northern Ireland are matters for the appropriate devolved administration.

1. Administration of the England National Concessionary Travel Scheme

Eligibility

Eligible People

Older People

- 1.1** There are two broad categories of people eligible for a statutory concession: men and women who have attained the state pension age for women and eligible disabled people (where no age limits apply).
- 1.2** Previously the eligible age for concessionary travel was 60 years of age. However, since 6 April 2010, the age of eligibility for concessionary travel in England has been tied to the pensionable age for women. So, as the pensionable age for women gradually increases from 60 to 65 so too will the age of eligibility for concessionary travel increase for both men and women.
- 1.3** The age of eligibility for concessionary travel is therefore:
 - For women = pensionable age
 - For men = pensionable age of a woman born on the same day
- 1.4** It was announced in the Spending Review 2010 that the Government plans to speed up the alignment of the pension age so that the pensionable age for women will now reach 65 by 2018 instead of 2020 as previously planned. Furthermore the pensionable age for both men and women will now rise to 66 by 2020. The age of eligibility for concessionary travel will increase in line with these and any other future changes to the pensionable age for women.

Guidance

- 1.5** DfT has published guidance on the change in the age of eligibility for concessionary travel, which can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/>

Disabled People

- 1.6** There are seven categories of disabled people who are entitled to the statutory minimum concession and these are set out in section 146 of the Transport Act 2000 and section 240(5) of the Greater London Authority Act (in relation to London).
- 1.7** An eligible disabled person is someone who:
- a. Is blind or partially sighted
 - b. Is profoundly or severely deaf
 - c. Is without speech
 - d. Has a disability, or has suffered an injury, which has a substantial and long-term adverse effect on his or her ability to walk
 - e. Does not have arms or has long-term loss of the use of both arms
 - f. Has a learning disability, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning
 - g. Would, if he or she applied for the grant of a licence to drive a motor vehicle under Part III of the Road Traffic Act 1988, have his/her application refused pursuant to section 92 of the Act (physical fitness) otherwise than on the ground of persistent misuse of drugs or alcohol.

Guidance

- 1.8** DfT has produced guidance to local authorities on assessing eligibility of disabled people, which can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/guidancedisabled/>

Eligible Services

- 1.9** The ENCTS applies on eligible local bus services as defined by the Travel Concessions (Eligible Services) Order 2002 as amended by the Travel Concessions (Eligible Services) (Amendment) Order 2009.
- 1.10** The 2009 Amendment Order explicitly excludes the following types of services from the mandatory concession:
- Services on which the majority of seats can be reserved in advance of travel (such as coaches);
 - Services that are intended to run for a period of less than 6 consecutive weeks;

- Services operated primarily for the purposes of tourism or because of the historical interest of the vehicle;
- Bus Substitution (rail replacement) services;
- Services where the fare charged by the operator has a special amenity element.

1.11 The changes introduced by the 2009 Amendment Order explicitly exclude certain types of service that are outside of the spirit of the mandatory national concession, thus reducing the potential for any confusion over whether a service is eligible. Local authorities remain able to offer concessionary travel on any service affected by the changes on a discretionary basis.

1.12 Further information about the changes introduced by the 2009 Amendment Order can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/eligibleservices/>

Geographical Coverage

1.13 The Concessionary Bus Travel Act 2007 entitles eligible people who are resident in England to travel on any eligible service within England.

1.14 TCAs are required by law to reimburse bus operators for carrying concessionary passengers. In respect of the mandatory concession, TCAs must reimburse bus operators for all concessionary journeys starting within their boundaries, regardless of where the concessionary passholder making the journey is resident.

1.15 TCAs that border Wales or Scotland can use their existing powers to offer travel across the border on a discretionary basis based on their assessment of local need and their overall financial priorities. Given the change in administrative responsibilities in England, any previously agreed cross-border discretionary concessionary travel schemes with lower-tier local authorities in England will need to be re-agreed between the relevant upper tier local authority in England and the relevant Welsh or Scottish authority. When making cross-border arrangements, TCAs should also be mindful of the differing ages of eligibility that now exist in the different countries.

Timings

1.16 The national bus concession in England is available at any time on a Saturday, Sunday or bank holiday, and from 9.30am to 11pm on any other day. TCAs are able to offer concessionary travel outside these hours on a discretionary basis.

1.17 The concessionary travel arrangements for older and disabled people in London are different from those in the rest of England. The statutory minimum concession in London is set out in the GLA Act 1999. In London, the statutory minimum hours at which the travel concession must be provided are at any time at weekends and bank holidays and from midnight to 4.30am and the period from 9.30am to midnight on any other day.

Residency

1.18 The Concessionary Bus Travel Act 2007 specifies that TCAs must issue a travel concession permit to an eligible person whose *sole or principal residence* is in the authority's area.

1.19 Concessionary travel legislation makes no reference to nationality but to "residents". Foreign nationals living in England who have met the residency requirements of the Concessionary Bus Travel Act 2007 would be eligible. A foreign national visitor on a short stay visa or visiting England for business or holiday is not a resident.

1.20 The concession in England is not available to those whose principal residence is overseas (or in Wales, Scotland, Ireland or Northern Ireland), whether or not the person holds a British passport.

1.21 Eligible persons who reside in more than one residence in England, Wales, Scotland or Northern Ireland should apply for a travel concession permit only with the TCA that they reside in most of the time.

1.22 Good practice would indicate that a signed declaration from an applicant is one way to assist fair application of the 'sole or principle residence criteria'. If you are a TCA that does not currently collect such a declaration, you may wish to consider including it in future application forms.

ENCTS Passes

Issue

1.23 The travel concession permit for the ENCTS is to be issued free of charge. The legislation does not require the applicant to be fully indemnified for the cost of providing his/her photograph - nor for any signed medical certification, or any postage on his/her application.

1.24 Bus operators must grant the statutory minimum concession to eligible persons. The purpose of imposing on the authority a duty to issue ENCTS passes is to enable concessionaires to provide evidence to bus operators of their entitlement.

- 1.25** There is no provision in the legislation about safe keeping and it is the Department's view (which it is stressed is only a view) that it is the ENCTS pass holder's responsibility to look after that evidence. This suggests that the obligation to issue an ENCTS pass free of charge would be limited to the first pass only. However, if a person applies for a replacement it is doubtful whether the authority would have the right to refuse to issue one without good reason or to charge more than a sum representing roughly the cost of producing it.
- 1.26** It is DfT's view that nothing in the legislation would prevent an authority from refusing to issue a replacement ENCTS pass to a person whom it had good reason to believe is engaged in fraud. As a matter of good practice in preventing fraud, the Department strongly recommends that any pass issued in replacement for one which has been lost or stolen should generally be issued using the same photograph as the original pass. Each TCA is strongly encouraged to maintain a database of persons to whom ENCTS passes have been issued, including a digitised photograph of each recipient.
- 1.27** The use of the ENCTS pass is subject to the conditions of carriage of the individual Operator on whose vehicle the journey is being made.

Specification

- 1.28** When the ENCTS was introduced in 2008 a new England-wide ENCTS pass design was introduced so that bus drivers throughout England could recognise at a glance that an ENCTS pass holder was eligible for free travel.
- 1.29** The Concessionary Bus Travel (Permits)(England) Regulations 2008 set out the specification of the England-wide ENCTS passes. TCAs are responsible for producing passes that comply with the standard design as specified in the regulations for their concessionaires.
- 1.30** The Regulations set out the position and format of the standard elements of the ENCTS pass - the holder's photograph, their name, the expiry date, the hologram, the unique identifying number, the ITSO logo, the rose logo, and the ribbon background. They also require ENCTS passes to be ITSO smartcards. This means that, where bus companies have installed ITSO smart readers on their buses, the passes will be read electronically. Where buses don't have ITSO readers, the passes will simply be shown to the driver.
- 1.31** The ENCTS pass features an expiry date which must be no more than five years from the date of issue. Whilst the maximum life of a pass is five years from the date of issue, there is no recommended minimum life.
- 1.32** The ENCTS pass has a hologram, which acts as a security feature and a deterrent to fraud and counterfeiting. The hologram is supplied by the DfT to

ensure that every hologram is identical. The hologram comprises the rose logo and ribbon design as follows:



Figure 1: Hologram design

ENCTS Pass Image

1.33 There are two different ENCTS pass designs, depending on whether the holder is eligible as a disabled person or as an older person. A blue strip down the right hand side shows that the pass has been issued to an older person; an orange strip shows that the pass has been issued to someone with an eligible disability.



Figure 2: ENCTS Pass design for Older People



Figure 3: ENCTS Pass design for Disabled People

- 1.34** The top right hand corner of the ENCTS pass is for local customisation. It must feature, as a minimum, either the logo or the name of the issuing TCA (or both) so that bus drivers can recognise who has issued the pass.
- 1.35** TCAs are free to add other additional symbols, logos or words if they wish. For example, as TCAs are able to offer additional benefits above the statutory minimum concession to their residents, they may wish to use this area to identify whether an ENCTS pass holder is eligible for any additional local benefits (e.g. companion travel or travel before 9.30am).

Data Collection

- 1.36** The Department suggests that the following minimum data should be collected and stored for each ENCTS pass holder:
- Name of pass holder
 - Address of pass holder
 - An Expiry Date for the pass
 - A Photograph
 - Entitlement Type (Age or Disability Related)
 - A unique reference number
 - ITSO Shell Reference Number (ISRN)
- 1.37** Authorities might also want to consider, subject to their own legal advice, collecting the national insurance number of the pass holder in order to assist future National Fraud Initiative (NFI) exercises that are carried out by the Audit Commission. The NFI is a matching exercise in comparing all of the concessionary travel data in the UK with the national death register in an attempt to find members of the public who are participating in fraud. The Audit Commission does not require additional work to be carried out to collect this information; however authorities may decide locally to collect it in order to further improve the quality of NFI matches. There is however no statutory requirement for an applicant of an ENCTS pass to divulge their national insurance number to a TCA.
- 1.38** More information on the NFI can be found at <http://www.audit-commission.gov.uk/nfi/Pages/default.aspx>
- 1.39** The Department also recommends that the TCA's arrangement with the General Registrar is such that they have access to deaths information to maintain their ENCTS passes database. This information could also be complimented by the NFI and/or DWP's optional Tell Us Once initiative, which is still in the pilot stages, with national roll-out due in March 2011.

- 1.40** The National Fraud Authority (part of the Attorney General's Office) is currently looking at ways of enhancing access to deaths data for local authorities and Councils for the purpose of fraud prevention.
- 1.41** All TCAs should satisfy themselves that all data on individuals is collected and further processed in accordance with the requirements of the Data Protection Act 1998 and that they have the requisite powers to request, keep and share any information.

Guidance

- 1.42** DfT has published guidance for TCAs on ENCTS pass issuing requirements, which can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/passes/>

Discretionary Arrangements

- 1.43** In addition to the mandatory bus concession, TCAs are also able to offer discretionary concessionary travel schemes, i.e. schemes which go beyond the statutory minimum in one or more respects. This does not necessarily require a separate scheme to be created; a scheme which offers benefits which include but are more generous than the statutory minimum will at the same time fulfil any obligation to ensure that the statutory minimum is provided.
- 1.44** The proposed arrangements for discretionary concessionary travel schemes should be published by the TCA at least 28 days before the scheme commences (additional time may need to be allowed if a Participation Notice is likely to be required). It should be clear to operators from the published details what concessions they will be required to offer and the timing and amount of reimbursement that they can expect to receive to cover their revenue forgone and any additional costs incurred.
- 1.45** TCAs have the flexibility to offer local enhancements just to their residents in the area covered by their scheme, and its vicinity (as now). If they wish (and at their own cost) they may offer discretionary benefits within the area of their scheme to all eligible persons from England on the production of their ENCTS pass.
- 1.46** Enhancements could include, for example:
- free travel before 9.30am;
 - a 50% (or other) discount before 9.30am;
 - free travel for any person travelling as the companion of a disabled person;
 - free, or reduced-rate, travel on other modes of transport.

- 1.47** Enhanced benefits can be given to all residents who are eligible for the national concession, or to subgroups (such as blind people). They can be given within a scheme area or sub-scheme area and, at the authority's discretion, on cross-boundary journeys, and journeys in the vicinity of the scheme area.
- 1.48** Authorities can only give an ENCTS pass to people who meet the criteria set out in the legislation for the statutory minimum concession. They can offer local benefits to people who do not qualify for an ENCTS pass but these local benefits should be offered through a pass that uses a design that is clearly different from the ENCTS pass.
- 1.49** The Department recommends that local authorities seek their own legal advice when creating, withdrawing or amending such polices. With reference to the Local Government Ombudsman Report of 24th September 2009, we recommend that local authorities should also be mindful of the impact that any changes to the concessions on offer may have on their residents and other stakeholders and keep them appropriately informed during the process. Authorities should also ensure that they comply with their own disability equality schemes.
- 1.50** The Government Ombudsman Report of 24th September 2009 found a number of TCAs guilty of 'maladministration causing injustice' when they removed some of the discretionary elements of their concessionary travel schemes. The full report can be found at the following link:
- 1.51** <http://www.lgo.org.uk/complaint-outcomes/transport-and-highways/transport-highways-archive-2005-to-date/havant-borough-council-07b15825-08-007-844/>

Schemes offered as an alternative to the statutory minimum concession

- 1.52** A TCA may provide an alternative scheme under s.93 of the 1985 Act whereby a person eligible for the statutory minimum concession may agree with the authority concerned to give up that entitlement for a period and to accept instead an alternative concession offered by that authority, such as travel tokens. The person concerned can opt for the alternative even if it would generally be of lower value than the statutory minimum bus concession.
- 1.53** In cases where authorities envisage offering a scheme (such as a token scheme) as an alternative to the statutory minimum, rather than in addition to it, they will need to ensure that the information provided about the alternative scheme makes clear to those participating in it that they do so on the basis that they have accepted it as an alternative to their rights to the statutory minimum (the national bus concession) and not as an addition to those rights.
- 1.54** It should be noted that authorities are not under an obligation to offer an alternative scheme; nor are their residents able to require them to offer it. It should also be noted that even where a TCA does offer an alternative to the

national bus concession to their own residents, they are still obliged to reimburse bus operators for all concessionaires using the ENCTS pass (including non-residents) for journeys starting in their area.

Funding

- 1.55** Central Government provides funding to TCAs for the ENCTS. From April 2011, all Central Government funding for the concessionary travel scheme will be provided through Formula Grant, which is administered by the Department for Communities and Local Government (DCLG). Formula Grant is a non-ringfenced, unhypothecated block grant which gives local authorities the freedom and flexibility they want in their use of funding.
- 1.56** This approach supersedes the funding mechanism where the Government provided funding for concessionary travel through two channels: Formula Grant from DCLG and Special Grant from DfT. Special Grant funding has been rolled into Formula Grant so that funding now comes from one source..
- 1.57** From July 2010 to October 2010, DCLG held a consultation on the distribution of Formula Grant from April 2011 onwards. Given the changes in administrative responsibility for concessionary travel from April 2011, the consultation included proposals for how to remove concessionary travel from the Formula Grant received by lower tier local authorities and then how to transfer it to the Formula Grant received by upper tier local authorities.
- 1.58** Details about the chosen options for taking forward the financial implications of the concessionary travel administrative changes and about future local authority funding allocations are available on the DCLG website:
<http://www.local.communities.gov.uk/finance/1112/grant.htm#con>

Reimbursement

- 1.59** TCAs are required by law to reimburse bus operators for carrying concessionary passengers, on the principle that the operators are "no better off and no worse off" by taking part in concessionary travel schemes. The aim is not to subsidise bus operators, but to pay for any increased costs that they have incurred.
- 1.60** Reimbursement of bus operators is divided into two elements: revenue forgone and net additional costs. Revenue forgone is the reimbursement of fares that operators would have received from concessionary journeys that would have been made in the absence of a scheme. The average fare forgone is generally not the same as the quoted commercial cash fare but should be calculated as an

average of all ticket types that would have been available to concessionaires in the absence of the scheme.

- 1.61** The proportion of observed concessionary journeys that are made purely because of the concession are referred to as 'generated journeys'. The only extra funding requirement associated with generated journeys should be the net additional costs that bus operators incur from these additional journeys. These are namely wear and tear on buses and possible costs from changes in service frequency or density. In very exceptional cases, net additional costs will include the costs to operators of buying an extra vehicle to cater for generated journeys.
- 1.62** Calculating concessionary travel reimbursement is predicated on determining what would have happened in the absence of the concessionary scheme and requires TCAs to estimate the following components of reimbursement:
- The fares that operators would have offered and concessionary travellers paid in the absence of the concession
 - The proportion of total observed concessionary journeys that would have been made in the absence of the concession
 - Any net additional costs that operators have incurred as a result of the concession.

Guidance

- 1.63** DfT provides guidance to local authorities and bus operators on how to calculate appropriate reimbursement. The latest version of this guidance can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/reimbursementappeals/busoperators/>

Appeals

- 1.64** In the event of a disagreement between an operator and TCA as to the reimbursement arrangements offered by the TCA, there is a mechanism provided under sections 98(2) and 99(2) of the 1985 Act and section 150(3) of the 2000 Act, by which the operator can apply to the Secretary of State for Transport for cancellation, variation or modification of the arrangements.
- 1.65** The right of an operator to apply to the Secretary of State for modification of the proposed reimbursement arrangements offered by a TCA is an important safeguard. This application process is often referred to as the 'appeal process'.
- 1.66** Applications should only be submitted after proper consideration and after attempts to reach a resolution at the local level have been exhausted. The time

limit for making an appeal is 56 days from the commencement or variation of a scheme.

- 1.67** The Secretary of State appoints independent decision makers to determine the applications on his behalf, in line with the provisions of section 100(5) of the 1985 Act and section 150(6)(b) of the 2000 Act.

Guidance

- 1.68** DfT has produced guidance on the appeals process, which can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/reimbursementappeals/>

Communications

- 1.69** TCAs are responsible for ensuring that people who are eligible to claim concessionary travel are able to do so.

- 1.70** TCAs should inform eligible people of the following:

- What they are entitled to;
- How they can obtain a ENCTS pass;
- How they can check their eligibility;
- What services they can use their pass on;
- How they can obtain further information.

Sharing Best Practice

- 1.71** The Concessionary Travel Online Community (CTOC) is a forum for those involved in delivering concessionary travel (including local authorities and bus operators) to share best practice, ideas and practical tips. You can sign up at the following link:

<http://www.communities.idea.gov.uk/c/844620/home.do>

Further Information

- 1.72** If you cannot find the information you need within this guidance or on the DfT website, the concessionary travel team can be contacted at the following email address: concessionaryfares@dft.gsi.gov.uk

2. Change in administrative responsibility - transitional issues

PLEASE NOTE: The following guidance notes on transitional issues reflect the views of the Department for Transport. It is ultimately up to the courts to determine whether authorities comply with the requirements of the law and therefore we would also advise authorities to take their own legal advice.

ENCTS Pass Issues

ITSO and ISL

Definition of Terms

- 2.1** ITSO Specification is the UK technical specification for interoperable smart ticketing. Concessionary Bus Travel (Permits)(England) Regulations 2008 (SI No 417, 2008) requires that all ENCTS passes must be issued in compliance with ITSO.
- 2.2** **ITSO Limited** is an organisation that supports, facilitates and enables the delivery of smart, integrated and interoperable ticketing across Great Britain.
- 2.3** **ITSO Services Limited (ISL)** is a separate company that has been set up by DfT and ITSO which provides certain services for "non-smart" English TCAs.
- 2.4** Host Operator or Processing System (**HOPS**) is the element of the back office system defined within the ITSO Specification to cover message handling, ITSO Shell & Product Accounting and Asset Management Functions..
- 2.5** TCAs that are "smart" retain an ITSO Licence and manage their own ITSO smart ticketing infrastructure. TCAs which are "non-smart" remain under contract with ISL.

Transitional Issues

- 2.6** New "non-smart" TCAs should contact ISL to sign new contracts (known as an 'Annex A agreement'), in order to supersede existing contracts held by their

constituent Districts no longer responsible for concessionary travel from 1 April 2011. Authorities who no longer retain TCA responsibilities after 31 March 2011 will be required to notify ISL of their intention to terminate the existing contract.

- 2.7** See the ISL Guidance Note (Re-organisation of Concessionary Travel Administration) for more information:
<http://www.itsoservices.org.uk/page167/Documents-And-Links>

Card Production Contracts

- 2.8** Districts and the corresponding County are encouraged to talk with each other to discuss the contracts with suppliers that already exist so that the upper-tier authority can make informed decisions about contracts going forward.
- 2.9** Any lower-tier authority that no longer intends to produce ENCTS passes from 1 April 2011 should terminate or transfer their contract with their supplier in accordance with the terms of their agreement.
- 2.10** Any upper-tier authority who intends to produce ENCTS passes from 1 April 2011 should ensure that contracts are in place with a supplier in good time to be able to carry out their concessionary travel responsibilities from this date. Authorities may wish to transfer-in an existing contract or multiple contracts or chose new suppliers. Authorities should do this within the scope of EU regulations and their own procurement rules.

OIDs and CPICCs

- 2.11** An OID (Operator ID) Number is issued by ITSO for unique identification of a participant within the ITSO environment. For the purposes of ENCTS, OIDs are utilised to identify concessionary travel schemes.
- 2.12** CPICCs (Concessionary Pass Issuing Cost Centre) denote the TCA responsible for administering the scheme.
- 2.13** Authorities who are responsible for concessionary travel for the first time from 1 April 2011 should contact ISL (tel. 0121 634 2758, email helpdesk@itsoservices.org.uk) as soon as possible to discuss OIDs and CPICCs compositions within their schemes.

Issuing of ENCTS passes

- 2.14** County councils cannot issue ENCTS passes until 1st April 2011. Passes issued by any TCA before this date are valid for travel until their expiry date. As a minimum, each ENCTS pass must show the name/logo of the issuing authority. The maximum expiry date that can be set is five years. This means that for up to five years, residents of the same local authority could hold travel passes that look

different but offer the same discretionary concessions - some residents will hold passes issued (prior to 1st April 2011) by the district authority and some will hold passes issued (after 1st April 2011) by the county council. TCAs should notify bus operators of the different pass designs in issue in their area and therefore which passes are valid for the different discretionary concessions that may be on offer.

- 2.15** If, from 1st April 2011, county councils are removing discretionary concessions that used to be offered previously by the districts then they should write to individual pass holders if they hold passes which contain logos/symbols that may lead the holder to believe they are still entitled to certain discretionary concessions. For example, ENCTS passes with C+ symbols on them to denote the presence of a discretionary companion scheme.

Discretionary Concessions

Use of well-being powers by district councils wishing to continue to provide discretionary travel concessions from April 2011

- 2.16** The well-being powers are contained in section 2 of the Local Government Act 2000-

“2 Promotion of well-being

(1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects—

- (a) the promotion or improvement of the economic well-being of their area;
- (b) the promotion or improvement of the social well-being of their area, and
- (c) the promotion or improvement of the environmental well-being of their area.

(2) The power under subsection (1) may be exercised in relation to or for the benefit of—

- (a) the whole or any part of a local authority's area, or
- (b) all or any persons resident or present in a local authority's area.

(3) In determining whether or how to exercise the power under subsection (1), a local authority [in England] must have regard to their strategy under section 4.

.....

(4) The power under subsection (1) includes power for a local authority to—

- (a) incur expenditure,
- (b) give financial assistance to any person,
- (c) enter into arrangements or agreements with any person,
- (d) co-operate with, or facilitate or co-ordinate the activities of, any person,
- (e) exercise on behalf of any person any functions of that person, and
- (f) provide staff, goods, services or accommodation to any person.

(5) The power under subsection (1) includes a power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside their area if they consider that it is likely to achieve any one or more of the objects in that subsection.

(6) Nothing in subsection (4) or (5) affects the generality of the power under subsection (1).”

2.17 Section 3 of the LG Act 2000 places limits on the well-being powers. For example, the power under section 2(1) does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made). So applying this principle to concessionary travel, from April 2011 a district council may not use its well-being powers to reverse the effect of the Concessionary Bus Travel Act 2007 (Variation of Reimbursement and Other Administrative Arrangements) Order 2010 which changes the responsibility for administration of concessionary travel schemes under the Transport Act 2000 and the Transport Act 1985. Therefore any future discretionary schemes by district councils would not count as schemes under the Transport Act 1985 and the provisions under that Act would not apply.

2.18 The well-being powers do appear however to be sufficient to allow a district council to establish a separate scheme offering travel concessions. Such a scheme would have certain important legal differences. For example, criminal sanctions would not apply in the event of failures of a bus service operator to provide a concession and the Secretary of State would not be obliged to resolve a dispute between the district council and a bus service operator regarding the proposed reimbursement arrangements. However, the district council could still enforce agreements with bus service operators as a contract in the county court.

Ability of County Councils to offer district level concessions

2.19 Although responsibility for discretionary enhancements is changing, it is not the intention of the change in responsibility to impact on the additional entitlements

offered. County councils will be able to take into account the differing needs of their individual residents in determining which discretionary concessions to offer.

2.20 The Order which shifts responsibility for administering concessionary travel (both the statutory scheme and discretionary enhancements) from lower tier local authorities to upper tier local authorities does not preclude:

- Upper tier authorities from maintaining or introducing district or local level discretions, for example where there are differing needs within differing parts of a county boundary.
- District Councils from providing funding to county councils to administer discretionary concessions on their behalf.
- District Councils from considering discretionary travel schemes using the "well-being powers" contained in the Local Government Act 2000, subject to advice from their own legal advisors.

Ability to offer alternative concessions to the ENCTS pass

2.21 Section 145A(9) of the Transport Act 2000 allows TCAs to enter into an agreement with an entitled concessionaire under which the person surrenders the right to their ENCTS pass for a period in return for travel concessions under a scheme (such as travel tokens or a railcard) under section 93 of the Transport Act 1985.

2.22 It is important to note that Section 145A(9) of the Transport Act 2000 would not apply to a scheme established by a district council under the well-being powers.

2.23 This means that lower tier authorities would no longer be able to finance the issue of, for example, travel tokens for use on taxi journeys by agreeing with older or disabled people that they waive their right to an ENCTS pass. Such an arrangement would need to be established by the upper tier authority.

2.24 District councils wishing to make use of their well-being powers to provide travel tokens may therefore wish to consider restricting the eligible categories of people to which they offer such tokens to ensure that they benefit those most in need. Alternatively district councils could provide funding to their county council to administer a travel token scheme on their behalf. In this circumstance the county council could make use of Section 145A(9) of the Transport Act 2000 to offer the tokens as a substitute for the ENCTS pass. The county council could then take any savings in ENCTS pass costs into account when agreeing the funding arrangement for the token scheme with the district council.

TUPE Implications

2.25 TCAs may need to consider the implications of Transfer of Undertakings Protection of Employment (TUPE) in the transfer of responsibility for concessionary travel from lower to upper-tier authorities.

2.26 Regulation 3(5) of the domestic TUPE Regulations 2006 says:

(5) An administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer.

2.27 We recommend that TCAs take their own legal advice if they have any queries over potential TUPE implications from the transfer of responsibility.

Data Handling

2.28 The transfer of concessionary travel data from lower tier local authorities (e.g. districts) to upper tier local authorities (e.g. counties) is necessary to meet the requirements of the Concessionary Bus Travel Act 2007 (Variation of Reimbursement and Other Administrative Arrangements) Order 2010. The transfer should therefore be compliant with the Data Protection Act (DPA), but authorities will want to bear in mind the following.

2.29 Fair processing - DfT sought advice from the Information Commissioner's Office (ICO) on what steps they think local authorities should take to inform individuals that their personal data is being transferred from lower tier authorities to upper tier authorities. The ICO's view is that best practice in this case would be for authorities to write to individual ENCTS pass holders to notify them of the change of arrangements – though they added that as the purpose of the processing is not changing, and the data is only moving from one local authority to another, it should be sufficient to place notices in the local press and on websites, as well as covering it in the next communication to ENCTS pass holders. It will be for individual local authorities to decide which approach to take. Further guidance in this area can be found in the ICO Privacy Notice Code of Practice

2.30 Data security - It is important to ensure that the transfer of the data meets appropriate security standards. The ICO Framework Code of Practice for Sharing Personal Information provides guidance on this.

2.31 Data accuracy - Exporting authorities will want to make sure that their data is accurate and up to date before transferring it to the new authority. The transfer should not be made earlier than is necessary to ensure a smooth transition in the administrative arrangements. The Data Protection Officer for your Local Authority should be able to provide further advice on any of these points.

Q&A

Q: Is transfer of historic reimbursement data / patronage data/ pass holder data allowed under the Data Protection Act (DPA)?

A: In our view, yes. In terms of the first Principle of the DPA, the disclosure is “necessary for the exercise of any functions conferred on any person by or under any enactment”.

Q: Do district councils have to transfer data to counties under the new legislation?

A: There is no reason for them not to. If they do not, they will not be able to continue processing the data themselves because they will have no legal basis for doing so.

Q: What if the district council is reluctant to hand over data before legal responsibility is transferred to the county council?

A: We don't believe there is anything in the Data Protection Act that would preclude the transfer of the data a reasonable period of time in advance of the law coming into effect, if it was done to ensure a smooth transition. Authorities should bear in mind however that if the data is transferred too far in advance, it is more likely to be out of date by the time they need to start using it. That could mean a further transfer would be necessary to bring the data up to date.

Q: Should either party to the transfer write to the individuals whose data is being transferred to inform them of the change?

A: The ICO's view is that best practice in this case would be for authorities to write to individual ENCTS pass holders to notify them of the change of arrangements. Though they did add that as the purpose of the processing is not changing, and the data is only moving from one local authority to another, it should be sufficient to place notices in the local press and on websites, as well as covering it in the next communication to ENCTS pass holders. It will be for individual local authorities to decide which approach to take.