

## Consultation response

Consultation on the application of EU Regulation 181/2011 concerning the rights of passengers in bus/coach transport

### Part 1 - Information about you

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Company Name or Organisation (if applicable)	Passenger Focus (the operating name of the Passengers' Council)
Please tick one box from the list below that best describes you /your company or organisation.	
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input type="checkbox"/>	Large Company
<input checked="" type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Police
<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Other (please describe):
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members: Passenger Focus is a statutory body established to represent the interests of rail users in Great Britain and of bus, coach and tram passengers in England, outside London. The Chairman and members are appointed in accordance with the provisions of the Railways Act 2005, as amended.	
If you would like your response or personal details to be treated <b>confidentially</b> please explain why: Passenger Focus does not seek to keep its response confidential.	

## PART 2 - Your comments

<p>1. Are you aware of any alternative sources of information on the number of disabled passengers and persons with reduced mobility that travel on regular services 250 km (155 miles) or longer?</p>	<p><b>No</b></p>
<p>Please explain your reasons and add any additional topics on which you would wish to see further guidance :</p> <p>-</p>	
<p>2. Do you (as a carrier) currently operate regular bus/coach services of 250 km (155 miles) or longer or (as a passenger) are you aware of carriers in Great Britain that run such services?</p>	<p><b>Yes</b></p>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>We are aware of at least three operators (National Express, Megabus and Scottish Citylink) some of whose routes exceed 250 km.</p> <p>We think it important to make clear that the passenger on such a service does not need to make a journey of that minimum “qualifying” distance himself, rather that the regulation applies to vehicles plying an overall route of at least this length.</p>	
<p>3. Do you agree with the proposed approach to apply this exemption in full for 4 years? If not, please state your specific objection(s). Should only some of the Articles be excluded from the exemption? If so which ones and why?</p>	<p><b>No</b></p>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>As far as we can ascertain most, if not all, operators currently provide this level of service/compensation. The reason for not applying the Regulation immediately, therefore, is unclear as no change to current practice would occur. The regulation would merely formalise the existing voluntary arrangement, which is in passengers’ interests and will not create any significant additional expenditure to the operators.</p>	
<p>4. Are you aware of any GB bus/coach services over 250 km (155 miles) in length that include at least one scheduled stop outside the EU?</p>	<p><b>No</b></p>
<p>Please explain your reasons and add any additional comments you wish to make:</p> <p>We cannot trace any direct British services which include a scheduled stop outside the European Union. Reaching such destinations (e.g. Switzerland, Norway, Ukraine, Croatia) from this country, it seems, always involves at least one change between vehicles on the Continent with the other leg(s) of the journey undertaken aboard a non-British vehicle.</p>	

<p>5. <i>Do you agree with the proposed approach to apply this exemption in full for 4 years? If not, what specific objection(s) do you have to the application of this exemption?</i></p>	<p><b>No</b></p>
<p>Please explain your reasons and add any additional comments you wish to make: For the same reasons listed under 3 above.</p>	

<p>6. <i>Do you agree with the Government's proposed approach to apply this exemption for 5 years, with a review after the first year? If not, what specific objection(s) do you have to the application of this exemption?</i></p>	<p><b>No</b></p>
<p>Please explain your reasons and add any additional comments you wish to make: The argument to apply exemption is surely not justifiable under existing equalities legislation. Our own research informs us of issues relating to driver quality and customer service skills and exemption would perpetuate an existing weakness.</p> <p>By September 2013 all bus drivers will have received training and as a result professional driving without such training shall be unlawful. On that basis we can see no justification in agreeing to a <u>five-year</u> derogation. Such a decision may discourage the industry from achieving the September 2013 deadline. We would reluctantly agree to a one-year derogation, but no longer.</p> <p>If an exemption is applied, operators and those overseeing them, must not use it as "dead time" but rather undertake a proper programme of monitoring. This will enable the Traffic Commissioners, or whoever assumes the role, to establish the resources required to undertake the task properly and to calculate likely costs. Even in the current straitened financial circumstances we cannot see that significant extra costs to the industry will result from the application of the Regulation.</p>	

<p>7. <i>Do you agree with the Government's view that we are unable to make use of this exemption? If not, how do you think its use could be justified?</i></p>	
<p>Please explain your reasons and add any additional comments you wish to make: The question in our view is ambiguous. The Government can make use of any exemption if it sees fit. However, we believe that this exemption should not be made. The level of protection under the Regulation is greater than that under existing national legislation and that therefore use must not be made of the exemption.</p> <p>While provision is already made through existing domestic legislation for some categories of disabled passengers, not all people with reduced mobility are covered by it, whereas were the Regulation in place, they would enjoy greater protection.</p>	

<p>8. <i>Is there any further evidence or information (particularly in terms of monetised costs/benefits) that you think should be taken into account when drafting the Department's final Impact Assessment?</i></p>	
<p><b>Please explain your reasons and add any additional comments you wish to make:</b> As mentioned in 6 above, any period during which an exemption is granted should be used to monitor likely costs of administration. See also our comments at 9 below.</p>	

<p>9. <i>Do you agree with the Government's proposed approach to make Traffic Commissioners the designated enforcement body for the EU Regulation in respect of bus/coach operators? If not, what specific objection(s) do you have and who do you think should have this role?</i></p>	<p><b>Yes</b></p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b> We support the need for proportionate sanctions to incentivise operators' behaviour. Passenger Focus has no firm view as to which body should be delegated to undertake these duties but certainly has no objections to the Transport Commissioners' assumption of this role. However, it is vital to ensure that whichever body is delegated has sufficient resources with which to fully undertake its additional role. We note the conclusions from the Commons Transport Committee's report on competition in the local bus market that the Traffic Commissioners themselves have already warned that their funding is insufficient to carry out even existing roles.</p>	

<p>10. <i>The Government is not proposing to make any breaches of the EU Regulation a criminal offence, as we do not believe it would be proportionate. Do you agree? If not, please outline your reasons.</i></p>	<p><b>Yes</b></p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b> -</p>	

<p>11. <i>The Government proposes giving the Traffic Commissioners powers to issue improvement notices requiring operators to put in place procedures to comply with the EU Regulation and the ability to impose financial penalties and/or attach licence conditions if deemed appropriate. Do you agree with this approach? If not, please state whether there are any options you deem more appropriate.</i></p>	<p><b>Yes</b></p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b> As stated above, the Traffic Commissioners, if this role is bestowed upon them, must have adequate resources to carry out the additional functions.  It is important that whoever undertakes this role applies uniform penalties and/or licence conditions.</p>	

<p><b>12.</b> <i>With regards to the penalties that could be imposed the Government proposes that these should reflect the existing system set out in section 155 of the Transport Act 2000 where the Traffic Commissioner has discretion but the penalty must not exceed £550 multiplied by the total number of vehicles the operator is licensed to use. Do you agree with this approach? If not, do you prefer the option of having specific penalty levels for breaches of the various articles or another approach?</i></p>	<p><b>Yes</b></p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b>  It seems sensible to reflect the current system which is already familiar. Passenger Focus is concerned that the penalty should be of sufficient deterrent to ensure compliance.</p>	
<p><b>13.</b> <i>If you agree that the Traffic Commissioners should have discretion, do you think that £550 multiplied by the total number of vehicles which the company is licensed to use under all the PSV operator's licences held by him is appropriate? If not, what level would you propose? Please outline your reasons why.</i></p>	<p><b>Yes,</b>  subject to the comment below</p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b>  As mentioned at 12 above, we see much merit in maintaining the current level of penalty. It is important, however, to ensure that repeat or persistent offenders are penalised at the higher end of the scale.</p>	
<p><b>14.</b> <i>If you prefer specific penalty levels being set for breaches of the various articles, do you think a standard level of penalty per article should be set or that the penalty level should reflect the seriousness of the article breached?</i></p> <p><b>14a</b> <i>If you think that a standard penalty level should be set per article do you agree that £1,000 is appropriate? If not, what level should be set? Please give your reasons for this.</i></p> <p><b>14 b</b> <i>If you think the penalty level should be determined by the seriousness of the article breached, what do you think the respective levels should be and the reasons for these?</i></p>	<p>n/a</p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b>  -</p>	
<p><b>15.</b> <i>If you prefer penalty levels being set for breaches of the various articles (rather than the Traffic Commissioners having discretion), do you agree with our proposal for the maximum penalty to be £5,000 (similar to that for criminal fines)? If not, what level should it be? Please explain your reasons for this.</i></p>	<p>n/a</p>
<p><b>Please explain your reasons and add any additional comments you wish to make:</b>  -</p>	

<p><b>16.</b> <i>In relation to tour operators and travel agents, do you agree that local weights and measures authorities in GB should enforce this regulation against both tour operators and travel agents, ultimately by means of a civil penalty? If not, who do you think should take enforcement action in relation to the limited provisions that apply to tour operators and travel agents, and how should they do that?</i></p>	<p><b>Yes</b></p>
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**Please explain your reasons and add any additional comments you wish to make:**

We agree that it is important for passengers to be protected. We are happy for this arrangement to take place as the consultation suggests, *provided* that the local weights and measures authorities are suitably resourced to undertake this additional role.

It strikes us that most coach passengers will not find themselves in a position to take direct action through the courts.

<p><b>17.</b> <i>Do you agree with the Government's proposed approach to make the Bus Appeals Body, London TravelWatch and the Bus Users' Platform the designated complaints bodies for the EU Regulation? If not, what specific objection(s) do you have to the designations?</i></p>	<p><b>Yes</b></p>
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**Please explain your reasons and add any additional comments you wish to make:**

Passenger Focus supports the need for a body to be established to assist passengers with making complaints. Key to the success of this will be to ensure that passengers are made aware of the complaints procedure. Research which we have undertaken revealed that passengers had little knowledge of either how to complain and to whom to complain.

One specific issue to address is cross-border complaints. Article 28 of Regulation EU/181/2011 on bus and coach passenger rights allows any passenger to submit a complaint to the national enforcement body (NEB) in any member state (i.e. to the NEB in their home territory, to an NEB in any of the territories through which the service travelled or to any other NEB in any other member state). We know from our experience with rail that this process requires guidance – not least who to contact; what information is required; clear processes etc. It will be important that this is addressed to ensure consistency.

The Bus Appeals Body and London TravelWatch are established bodies, well experienced in handling complaints. We note that the Bus Appeals Body is funded via the industry. In our experience this does not compromise the organisation's independence, the concept of "polluter pays" being common. However, it is important that the industry and the designated bodies ensure that independence is not compromised and is seen as not being compromised.

(Our remit excludes bus and coach matters in Scotland and therefore we cannot comment on the appropriateness of Bus Users' Platform to carry out such tasks.)

Passenger Focus continues to extend its offer of assistance to ensure consistency of approach between the rail and bus industries.

18. Do you agree with the Government's proposed criteria for assigning the designated terminals? If not, what alternative approach would you suggest?

**No**

Please explain your reasons and add any additional comments you wish to make:

The cut-off point of 50,000 journeys per year seems high, especially as this will in effect designate very few locations – perhaps only London Victoria and Birmingham coach stations. Broader criteria to include the number of passengers making longer-distance journeys would be more appropriate.

We are convinced that greater examination of candidate locations will discover others which should qualify as a 'designated terminal' in this sense. We suggest that Manchester Coach Station also be designated, as it is a reasonable hub with staffing and facilities.

However, we acknowledge that many coach and bus stations have only modest passenger facilities and apart from the vehicle drivers themselves are unstaffed, especially on Sundays and in the evening. Many of these pick-up/set-down points are, however, large and busy – even on Sundays and in the evening.