

GUIDANCE TO LOCAL AUTHORITIES ON ASSESSING ELIGIBILITY OF DISABLED PEOPLE IN ENGLAND FOR CONCESSIONARY BUS TRAVEL

Introduction: The New All-England Concession

1 The Concessionary Bus Travel Act 2007 ('the 2007 Act') provides for a statutory guarantee of free off-peak travel for eligible older and disabled people on local bus services anywhere in England ('the national concession'). Provisions in the 2007 Act have been commenced to enable the national concession to begin on 1 April 2008.

2 The 2007 Act modifies existing legislation which guarantees free off-peak local bus travel in England only within the area of the local authority in which an eligible person resides. The grant of concessions is governed outside Greater London by sections 145 to 150 of the Transport Act 2000 ('the 2000 Act') and within London by sections 240 to 244 of, and Schedule 16 to, the Greater London Authority Act 1999 ('the 1999 Act').

Outside Greater London.

3 The 2000 Act requires the operator of a bus service to provide the statutory minimum to any person holding a 'statutory travel concession permit'. Local authorities which are 'travel concession authorities'¹ must issue a permit free of charge to any applicant who appears to that authority to be an 'elderly or disabled person' residing² in its area. An 'elderly person', for the purposes of the 2007 Act, is a person who has attained the age of 60 years. For the purposes of the 2007 Act, disabled people are defined by reference to seven categories (section 146).

¹ Defined as any Passenger Transport Executive, non-metropolitan district council and, where there is no district council for an area, a county council. The 2007 Act adds London authorities and the Council of the Isles of Scilly to this definition.

² The 2007 Act amends the requirement from simple 'residence' in a particular travel concession authority area to a requirement that an eligible person have his 'sole or principal residence' in that area in order to qualify.

Greater London.

4 The 1999 Act has the effect of requiring London local authorities to agree uniform arrangements with Transport for London under which travel concessions are extended to older people and to disabled people in the same categories as those listed in the 2000 Act. Failure to reach agreement on such arrangements would trigger a reserve 'free travel scheme' (see Schedule 16), under which certain travel concessions must be provided.

Free Bus Passes:

5 The concessionary fares pass for the statutory minimum 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. Local authorities should issue passes which conform to the standard design specifications published by the Department.

Replacement Bus Passes:

6 Bus operators must grant the statutory minimum concession to eligible persons. The purpose of imposing on the authority a duty to issue passes is to enable concessionaires to provide evidence to bus operators of their entitlement. 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 pass holder's responsibility to look after that evidence. This suggests that the obligation to issue a 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. It is the Department's view that nothing in the legislation would prevent an authority from refusing to issue a replacement 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 travel concession authority is strongly encouraged to maintain a database of persons to whom concessionary travel passes have been issued, including a digitised photograph of each recipient.

Discretionary concessions and eligibility for the statutory minimum concession

7 In addition to the statutory minimum concession guaranteed under the 2000 Act, the Transport Act 1985 ('the 1985 Act') gives local authorities outside London the power, at their discretion, to offer *additional* travel concessions to people in any of the categories

defined in section 93(7) of that Act. For example, although the statutory concession does not extend to companions of disabled pass holders, local authorities remain free to offer concessions to companions using discretionary powers under the 1985 Act.

8 It is important to emphasise that national concession bus passes *may only* be issued to people aged 60 or over and to eligible disabled people (as assessed using this guidance). Passes of the national concession design *must not* be issued to other groups, such as companions of disabled people, as this could lead to confusion about their entitlement to the statutory concession as opposed to discretionary enhancements. Passes issued on a discretionary basis (under the 1985 Act) rather than under powers in the 2000 Act and the 1999 Act should be produced to a different design from the new national pass.

9 Under the terms of the 2000 Act and the 1999 Act, it is for a local authority to determine whether someone is a 'disabled person' for the purposes of concessionary travel. But the 2000 Act and the 1999 Act both provide for the Secretary of State to issue to local authorities guidance to which they must have regard in reaching a decision. In doing so, the Secretary of State is obliged to consult the Disabled Persons Transport Advisory Committee (DPTAC - the Government's statutory advisers on the mobility needs of disabled people) and local authority interests.

10 This statutory Guidance, which has been subject to the required consultation, 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.

General criteria to be taken into account in determining entitlement

11 The categories of disabled person listed in the 2000 Act and the 1999 Act in relation to concessionary travel do not cover the full range of disabled people included within the Disability Discrimination Act 1995 (DDA) definition.³

12 However, in line with the central principle of the DDA definition, the types of disability which should enable people to claim the statutory minimum bus travel

³ 'A physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities': see section 1(1).

concession are those which are permanent, or which have lasted at least 12 months, or which are likely to last at least 12 months or are likely to recur [although the likelihood of an effect recurring may be disregarded in pre-agreed circumstances]. This disability should have a substantial effect on a person's ability to carry out normal day-to-day activities.

13 It should not be necessary for the effect of the disability to be the same throughout the period - it may worsen or diminish at different times - but local authorities should nevertheless satisfy themselves that it will have (or be likely to have) such an effect throughout the period.

14 A person may have more than one disability which would cause them to be eligible for the concession.

15 The 2007 Act provides an entitlement to a concession against a full adult fare. It does not set age limits for recipients of this concession. It should therefore be taken to apply the concession to adults and to all disabled children and young people of fare-paying age.

16 In any application for a concessionary travel pass, the onus will be on the applicant to prove their entitlement.

Assessing Eligibility

17 The Department recommends that, where available, the most robust way of assessing eligibility is likely to be via other relevant state benefits.

18 Eligibility for a concessionary travel pass may be considered "automatic" (not requiring further assessment) where a person is in receipt of one or both of the following state benefits, which link eligibility to receive the benefit to the ability to walk, provided that the person is of fare paying age and that the award of the benefit has been for at least 12 months or is expected to be for at least 12 months:

- Higher Rate Mobility Component of the Disability Living Allowance (HRMCDLA);
- War Pensioner's Mobility Supplement (WPMS).

19 Applicants claiming these benefits will be able to provide documentary evidence of their entitlement. An example of proof of entitlement is proof of payment of the allowance. An applicant receiving the HRMCDLA will be able to produce an award notice letter from the Disability & Carers Service (DCS) or, alternatively, an excise duty exemption certificate (which is given to those who receive HRMCDLA). If they have lost the award notice, the DCS can provide another copy at:

<http://www.dwp.gov.uk/lifeevent/benefits/dcs/>.

20 An applicant receiving WPMS will have an award letter from the Service Personnel and Veterans Agency (Free-phone enquiry number 0800 169 22 77).

21 Eligibility may also be considered automatic where a disabled person of fare paying age has been issued with a disabled persons' parking badge ("Blue Badge"). It does not, of course, follow that a person who has a concessionary travel pass is necessarily eligible for a Blue Badge.

22 For applicants outside the above categories, the Department recommends that the next most robust means of assessment is likely to be via local authority lists of registered disabled people where these are relevant. This is covered in more detail below for people who are blind or partially sighted, or profoundly or severely deaf. Where a person is registered with an authority outside their current area of residence, the local authority may wish to consider the desirability of contacting that authority as against other means of assessing eligibility.

23 For other applicants, where there is any doubt about eligibility, the Department recommends that local authorities seek independent medical evidence to inform their decision. The cost of this should not be borne by the applicant.

24 Using an applicant's GP to verify that an individual meets the criteria for a concessionary travel pass is regarded as an unsatisfactory arrangement for both the GP and the administrators of the scheme. The main argument against this approach is that it compromises the doctor / patient relationship.

25 The Department strongly recommends that independent health professionals should undertake assessments in place of GPs. In the case of assessment of the inability to walk, for example, occupational therapists or physiotherapists are often best placed to assess eligibility due to their professional knowledge of mobility. Transferring assessment to such specialists implicitly suggests the importance of making judgements based on physical mobility rather than medical conditions.

26 The Department recommends that, where possible, local authorities run dedicated assessment centres to assess eligibility. As well as having the potential to reduce costs, this can help to ensure that a fair and equitable service is provided to all applicants who are required to have an assessment. Moreover, scope for identity fraud can be reduced if photographs for use on passes are taken at the time of assessment.

27 Neighbouring authorities may wish to work together in running such assessment centres to achieve economies of scale. In assessment centres, or where any specialist is consulted, an authority will need to satisfy itself of the fitness of the specialist to carry out the assessment.

28 In a rural authority, where the population is scattered and accessibility could be a problem, careful consideration needs to be given as to how medical assessments are carried out, such as whether people may require additional assistance to attend medical facilities.

29 Where, as a last resort, it is necessary to use a GP, the contact should be made direct by the authority, having secured the applicant's agreement, and the GP should only be asked for answers to factual questions. They should not be asked for an opinion on whether someone meets the criteria.

The Seven Categories

30 There are seven categories of disabled person identified as eligible for concessionary bus travel in the 2000 Act. The same categories are reproduced in the 1999 Act, although that Act lists blind and partially sighted people separately.

31 The Department strongly recommends that when a local authority issues a concessionary travel pass to an eligible disabled person, the authority keep a record of the particular category of disability under which a person qualifies (as well as details of how the assessment was carried out and by whom). The Department also recommends that the local authority should consider the category of disability when setting the expiry date of the pass. This would reflect the fact that some disabilities are clearly permanent, whereas others may last for only a limited period. It may therefore be appropriate to consider setting an expiry date of one year, for example, where circumstances would suggest this is sensible. Authorities are encouraged to seek independent medical advice on this point.

32 Under the legislation, an eligible disabled person is someone who:

"(a) is blind or partially sighted"

33 'Blind' means having a high degree of vision loss i.e. seeing much less than is normal or perhaps nothing at all. 'Partially sighted' is a less severe loss of vision. Partially sighted people can see more than someone who is blind, but less than a fully sighted person. Blind and partially sighted people can register with their local council. The register is held by the social services or social work department, or by a local voluntary agency, and is confidential.

34 For registration purposes, the term 'blind' now becomes 'severely sight impaired (blind)' and partially sighted becomes 'sight impaired (partially sighted)'. The formal notification required to register as "severely sight impaired" or "sight impaired" is a Certificate of Vision Impairment (CVI), signed by a Consultant Ophthalmologist (eye specialist). However, registration is voluntary. The individual should have a copy of their CVI and should be encouraged to register, if they have not already done so, as they may be entitled to various other benefits too.

35 In general terms a person can be registered as severely sight impaired (blind) if they cannot see (with glasses, if worn) the top letter of the eye test chart (used by doctors and opticians) at a distance of 3 metres or less. Some people who can read the top letter of an eye test chart at 3 metres, but not at 6 metres, may still be eligible for registration as blind if their field of vision is also severely restricted. Only being able to read the top letter at 3 metres is sometimes referred to as 3/60 vision: the person can see at 3 metres what a person with normal vision can see at 60 metres.

36 A person can be registered as sight impaired (partially sighted) if they have a full field of vision but can only read the top letter of the eye test chart at a distance of 6 metres or less (with glasses, if worn). However, if they can read the next three lines down at the same distance, but the field of vision is either moderately or severely restricted, they may still qualify for registration.

37 The Department advises that concessionary travel passes should be issued to people whose sight is so impaired that they would be able to register as severely sight impaired (blind) or sight impaired (partially sighted). Local authorities may, where a person is not on the local authority register, require evidence from an eye specialist, for example an optometrist, that the applicant would qualify to be registered as severely sight impaired (blind) or sight impaired (partially sighted). Advice on how to register can be found on the Royal National Institute for the Blind (RNIB) website at:

http://www.rnib.org.uk/xpedio/groups/public/documents/publicwebsite/public_registration_home.hcsp

"(b) is profoundly or severely deaf"

38 Hearing loss is measured in decibels across the normal hearing spectrum, as dBHL (Hearing Level). People are generally regarded as having a severe hearing loss if it reaches 70-95 dBHL and a profound loss if it reaches 95+ dBHL. The Department advises that the statutory minimum concession should be made available to people in these categories.

39 There is no statutory registration system for deaf people. However, many will be registered on a voluntary basis with their local authority social services department. The register is open to people who have varying degrees of hearing loss, so in checking the register a local authority is advised to check that the applicant is profoundly or severely deaf before issuing a national concession bus pass.

40 As in the case of blind and partially sighted people, local authorities may, where appropriate, require applicants to provide evidence of registration before issuing a pass, or evidence that they could register, for example, an audiological report, or a report from an aural specialist.

"(c) is without speech"

41 Included within this category are people who are unable to communicate orally in any language. Those people will be:

- unable to make clear basic oral requests e.g. to ask for a particular destination or fare;
- unable to ask specific questions to clarify instructions e.g. 'Does this bus go to the High Street?'

42 This category would not, in the Department's opinion, cover people who are able to communicate orally but whose speech may be slow or difficult to understand, for example because of a severe stammer.

43 In considering an application on these grounds the local authority may reasonably require medical evidence to support the application in appropriate cases.

"(d) has a disability, or has suffered an injury, which has a substantial and long-term adverse effect on his ability to walk"

44 To qualify under this category, a person would have to have a long term and substantial disability that means they cannot walk or which makes walking very difficult.

45 It is envisaged that passes will be issued to people who can only walk with excessive labour and at an extremely slow pace or with excessive pain. Their degree of impairment should be at comparable level to that required to claim the Higher Rate Mobility Component of Disability Living Allowance. This is set out below:

(i) they cannot walk or...

Being unable to walk means that they cannot take a single step.

They need to show that because of their disability they cannot put one foot in front of the other.

Walking involves always having one foot on the ground.

If their only way of getting about is to swing through crutches then they will be considered unable to walk.

(ii) ...they are virtually unable to walk, or...

They will need to show that, as a result of a physical disability, they are unable to walk very far without experiencing severe discomfort. This question does not apply to people with mental disabilities, your inability to walk very far must stem from a physical condition.

The Department for Works and Pensions take a number of factors into account when deciding whether or not someone meets this criterion. For example:

Discomfort can mean either pain or breathlessness. Extreme fatigue and stress may also be taken into account. It has been accepted that discomfort is subjective and that some people have higher pain thresholds than others.

Unless both legs are missing then they will need to show that they experience severe discomfort even when using an artificial aid.

When deciding whether they are virtually unable to walk the following factors should be taken into account:

- the distance over which they can walk without experiencing severe discomfort
- the speed at which they can walk
- the length of time for which they can walk
- the manner in which they can walk

If they can only walk up to 27 metres without severe discomfort then they will qualify for

the higher rate.

If they can only walk between 27 and 64 metres without severe discomfort then it is likely that they will qualify for the higher rate.

If they can walk more than 64 metres without severe discomfort then they will need to show that the other three factors mean that they are virtually unable to walk. For example, if they can show that it takes them five minutes to walk 100 metres, they should qualify for the higher rate.

As a guide, the average person can walk the following in a minute:

- 90 metres at a brisk pace
- 60-70 metres at a moderate speed
- 40-50 metres at a slow pace
- 30-40 at a very slow pace

It does not matter whether the severe discomfort occurs at the time of their walk or later. What counts is that the discomfort is a direct result of their attempt to walk.

(iii) The exertion required to walk would "constitute a danger to their life or would be likely to lead to a serious deterioration in their health"

The test here is whether the exertion required to walk would constitute a danger to their life or whether it would be likely to lead to a serious deterioration in their health.

They need to show that they should not walk very far because of the danger to their health.

This criterion is intended for people with serious chest, lung or heart conditions.

Some people with haemophilia may also qualify for the higher rate in this way.

The serious deterioration does not need to be permanent but it should require medical intervention for them to recover.

They will need to show that any danger to their health is a direct result of the physical effort required to walk.

People with epilepsy will need to show that any fits were brought about by the effort required to walk

46 In all cases, entitlement depends on the applicant's difficulty in walking and considerations, such as difficulty in carrying parcels, are not to be taken into account.

47 The fact that a walking aid is or is not used may be relevant to the eventual decision, but these alone should not determine whether or not a person qualifies. For example, if a person can walk relatively normally with the use of an artificial leg, then they should not be considered eligible. Alternatively, a person who can only swing through on crutches could be considered eligible, as they would be seen as having considerable difficulty walking (provided it is due to a long term disability and not due to legs being in plaster).

48 The Department advises that the authority should normally require medical evidence to support the claim that the applicant's walking ability is long term and substantially impaired.

"(e) does not have arms or has long-term loss of the use of both arms"

49 This category includes people with a limb reduction deficiency of both arms; bilateral upper limb amputation; muscular dystrophy; spinal cord injury; motor neurone disease; or a condition of comparable severity.

50 In the Department's opinion, it also covers both people with deformity of both arms, and people who have both arms, if in either case they are unable to use them to carry out day-to-day tasks, for example, paying coins into a fare machine. In these latter cases the Department advises that a local authority should normally require independent medical evidence to support the application.

"(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"

51 A person with a learning disability has a reduced ability to understand new or complex information, a difficulty in learning new skills, and may be unable to cope independently. These disabilities must have started before adulthood and have a lasting effect on development. The person should be able to qualify for specialist services and he or she may have had special educational provision.

52 The Department of Health adopted the term 'learning disability' in 1992. It has the same meaning as its predecessor 'mental handicap' but it is seen as more acceptable, particularly in reducing the confusion with mental illness.

53 In determining eligibility in a case where there has been no previous contact with specialist services a local authority should normally require independent medical advice, or check any register of people with learning disabilities which might be held by the Social Services Department of the applicant's local council.

"(g) would, if he applied for the grant of a licence to drive a motor vehicle under Part III of the Road Traffic Act 1988, have his application refused pursuant to section 92 of the Act (physical fitness) otherwise than on the ground of persistent misuse of drugs or alcohol."

54 Under Section 92 of the Road Traffic Act 1988 the Secretary of State may refuse to issue a driving licence on the grounds of the applicant's medical fitness. Those who are currently barred from holding a licence are people with:

- i. epilepsy (unless it is of a type which does not pose a danger - see below);
- ii. severe mental disorder;
- iii. liability to sudden attacks of giddiness or fainting (whether as a result of cardiac disorder or otherwise);
- iv. inability to read a registration plate in good light at 20.5 metres (with lenses if worn);
- v. other disabilities which are likely to cause the driving of vehicles by them to be a source of danger to the public.

55 It will be seen that specific reference is made to people who **persistently misuse drugs or alcohol**. Those people are not covered by the definition of 'disabled person' under the Act and are thus not entitled to the statutory minimum travel concession.

56 It is not a condition of entitlement under this category that the disabled person should apply for and be refused a driving licence (which would be unduly burdensome for everyone involved). If, for people with any of the disabilities (ii) - (iv) listed above, the local authority can be confident that a licence would be refused it should therefore be able to issue the travel pass automatically. For (i) epilepsy - the bar is not automatic and depends on the circumstances.

57 The Motor Vehicles (Driving Licences) Regulations 1999 permit the grant of a driving licence to a person with epilepsy if that person:

- (a) has not had an epileptic attack whilst awake for a year or more; or

(b) has a history of attacks whilst asleep, and only whilst asleep, over the past three years or more,

...provided that the driving of a vehicle by that person is not likely to cause danger to the public.

58 There are a number of categories of "severe mental disorder" under which people may qualify. Authorities will need to assess individuals on a case-by-case basis as eligibility may depend on the severity of the condition. Such conditions include (but are not limited to) dementia (or any organic brain syndrome); behaviour disorders (including post head injury syndrome and Non-Epileptic Seizure Disorder); and personality disorders.

59 Other groups include:

- People with restricted visual fields, who will be refused a licence if they do not have a horizontal field of vision of at least 120 degrees, or if they have significant scotoma encroaching within 20 degrees of the central fixation point in any meridian or, sometimes, if they have restricted vertical fields of vision;
- Insulin dependent diabetics. In general people with insulin dependent diabetes can continue to drive - though their licence may be renewable on a 1, 2, or 3-yearly basis. However, where the person experiences disabling hypoglycaemia they will be prevented from driving until their diabetes is controlled.

60 The above list is not comprehensive. Any person with a cardiac, locomotor, renal or neurological disorder might qualify. Where there is doubt about whether someone would be refused a driving licence, the local authority is strongly advised to require independent medical advice.