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Concessionary Bus Travel Bill (HL)

Bill 60 of 2006-07

This Bill seeks to guarantee free off-peak travel for everyone aged 60 and over and all disabled people on local buses anywhere in England from April 2008. At present, those aged 60 and over and disabled people are guaranteed free off-peak travel on local buses only within their own local authority areas.

Free bus travel would be available for those eligible from 9.30am until 11pm on weekdays and all day at weekends and on bank holidays.

Local authorities would still be able to offer additional benefits to their residents, such as travel before 9:30am and concessions on other modes of travel like trams, as well as alternative forms of travel scheme, such as tokens for use on taxis or community transport.

The Bill includes a power to allow, in the future, for mutual recognition of national concessionary bus passes across the United Kingdom.

The Bill extends to the whole of England. Concessionary bus travel is a devolved matter. Scotland, Wales and Northern Ireland already operate their own schemes.

Louise Butcher

BUSINESS AND TRANSPORT

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Summary of main points

The *Transport Act 2000* amended the legislation covering concessionary fares in England and Wales from 1 June 2001 outside London and 1 April 2001 in London. Local authorities had to provide elderly people and disabled persons with at least a half-fare concession on local bus travel. The *Travel Concessions (Eligibility) Act 2002* equalised the age of eligibility for travel concessions for men and women at 60 from April 2003. The age for entitlement will increase for both sexes between 2010 and 2020 with the phased increase in women's state pension age.

The legislation provided a minimum concession but did not preclude local authorities from being more generous. Local authorities have had discretion to offer further concessions on bus and other public passenger transport services if they wished under the *Transport Act 1985* and the *Greater London Authority Act 1999*. As a result the nature and extent of such concessions varied from region to region depending on the local authority.

The Chancellor announced in the 2005 Budget that free off-peak local area bus travel would be introduced in England from 1 April 2006 for those over 60 and the disabled. In his 2006 Budget speech the Chancellor announced that, from April 2008, 11 million over 60s and disabled people in England would be entitled to free off-peak local bus travel in every area of the country. A recent report from the TAS consultancy found that a single national scheme would make life simpler for all concerned and could offer significant savings in the cost of administering concessions.¹

The *Concessionary Bus Travel Bill 2006/07* legislates for these changes. The Bill would:

- guarantee free off-peak travel for everyone aged 60 and over and disabled people on all local buses anywhere in England from April 2008 from 9.30am until 11pm on weekdays and all day at weekends and on bank holidays;
- allow, in the future, for mutual recognition of national concessionary bus passes across the United Kingdom; and
- give the Secretary of State reserve powers to alter the administrative arrangements of the Scheme.

¹ currently estimated at £31 million (TAS Consultancy, *Concessionary Fares UK 2006*, 21 March 2006)

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I Current travel concession system

A. England, outside London

Provision for travel concessions is contained in the *Transport Act 1985*, the *Greater London Authority Act 1999*, the *Transport Act 2000*, the *Travel Concessions (Eligibility) Act 2002* and the *Travel Concessions (Extension of Entitlement) (England) Order 2005*.

Under the 2000 Act local authorities in England and Wales were required to arrange for elderly and disabled people living in their area to receive a half-fare concession on local bus services subject to the person obtaining a bus permit, which had to be given free of charge.

The 2000 Act also linked the entitlement of elderly people to travel concessions to pensionable age as defined in the *Pensions Act 1995* (that is 60 for women and 65 for men). The 2002 Act equalised the age at which men and women become entitled to travel concessions at the age of women, from April 2003.² Schedule 4 to the *Pensions Act 1995* provides for pensionable age to be equalised at 65 for both men and women by 2020, with transitional arrangements from 2010. The age for entitlement will thus increase for both sexes between 2010 and 2020 with the phased increase in women's state pension age.

Local authorities outside London also have discretion, under the 1985 Act, to offer further concessions on bus and other public passenger transport services if they wish.

The Chancellor announced on 16 March 2005 that free off peak local area bus travel would be introduced in England from April 2006 for those over 60 and the disabled. This was introduced by the *Travel Concessions (Extension of Entitlement) (England) Order 2005*, which came into force on 31 December 2005.³

B. London

In London, section 50 of the *London Regional Transport Act 1984* placed the statutory responsibility on the London borough councils to fund concessionary travel and to enter into arrangements with London Regional Transport. The 32 London boroughs and the City of London could unanimously agree a scheme of concessionary fares for elderly, blind and disabled people, to be operated by London Transport on their behalf. The local authorities then reimbursed the transport operators. Unanimous agreement to continue the voluntary

² The Act followed a claim that sex discrimination in the age at which travel concessions were granted was a breach of the European Convention of Human Rights. On 10 October 1997, Michael Matthews, aged 64, applied for an elderly person's travel permit which would have entitled him to travel free on most public transport in Greater London. He was refused. He made an application to the European Court of Human Rights alleging that his rights under article 14 of the convention (prohibition of discrimination in the application of convention rights) and article 1 of the first protocol to the convention (right to peaceful enjoyment of possession) had been breached. A hearing was held on 28 November 2000 at the European Court of Human Rights, where it was ruled admissible, but there was no full hearing of the case.

³ SI 2005/3224

scheme for each financial year had to be reached by 31 December of the previous year. If unanimous agreement was not reached the Act provided for the Secretary of State to enforce a scheme on the boroughs.

Under the *Greater London Authority Act 1999* responsibility for concessionary fares remains with the boroughs but the voluntary arrangements are now with Transport for London (TfL). Section 240 established a similar scheme to the previous one: the local authorities make voluntary arrangements with TfL and other transport operators, but if they do not agree, TfL is able to implement a reserve scheme (the 'reserve free travel scheme') and charge the boroughs for the cost of doing so. The arrangements require two-thirds of local authorities to agree, rather than the 100 per cent that was required before.

The London scheme (known as the Freedom Pass) provides a standard concession for the elderly, blind and disabled people across the 33 boroughs, with the costs of the single scheme being charged back to each of the boroughs under an agreed formula, based on the number of permits issued to the residents of each borough. The scheme provides free travel for passholders on bus, underground and the docklands light railway (DLR) services. There are not as many categories of eligibility listed as in the 1985 Act: child concessions are not included in the legislation and are provided on a commercial basis by TfL.

The 2000 Act made similar provision for Greater London as for the rest of the country by modifying the provisions in the *Greater London Authority Act 1999* defining when the reserve free travel scheme would be triggered. In practice it has had little effect as the London scheme was already more generous than the then statutory one: it would only be triggered if the London scheme became less generous than the statutory one.

There are certain restrictions on the times that permit holders can travel. Free travel is available on TfL buses and the tube from 9am until 3am the next day, Monday to Friday and at any time on Saturday, Sunday and Public Holidays. Free travel on railway services in the London area is available from 9.30am Monday to Friday until the last train and any time on Saturday, Sunday and Public Holidays. Blind permit holders below the age of 60 (for women) and 65 (for men) are entitled to free travel on TfL buses and underground trains at all times but are subject to the same restrictions on railway services as all other permit holders.

C. Scotland

The *Transport (Scotland) Act 2001* provides the power to impose a national concessionary scheme in Scotland. Section 68 states that "Scottish Ministers may by order require such local transport authority as may be specified in the order, or two or more such authorities acting jointly, to make a scheme covering such area as may be specified in the order for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys." "Eligible person" is defined as a person who resides in the area covered by the scheme and has attained "pensionable age" or has certain disabilities. Scotland did not introduce legislation to reduce the age of eligibility for men to 60 but introduced the changes under a voluntary agreement with the local authorities and bus operators.

The Scottish Executive had a commitment to provide free off-peak bus travel for the elderly and disabled. The Transport Minister, Sarah Boyack, announced in 2000 that she had commissioned a research project to look at all the options for improved concessionary travel for pensioners.⁴

An agreement between the Government and the bus companies allowed off peak free travel for pensioners, those with special needs and men aged 60 to 64 to be introduced on 1 October 2002.⁵ The Scottish Executive made additional resources available in the general local government settlement but the money was not ring fenced. The scheme was extended to Scotland-wide travel from April 2006.⁶ The new National Entitlement Card gives disabled people and those over 60 free travel anywhere in Scotland at any time of day on local buses and long-distance scheduled coaches. Concessionary travel is the first application of the National Entitlement Card. In the future the card will be used to access other local services.⁷ Older and disabled residents on Scottish islands will also be entitled to two free return ferry trips to the mainland per annum.

D. Wales

Concessionary fares are within the remit of the National Assembly for Wales and it is responsible for overseeing the administration of concessionary fare schemes by local authorities. Statutory provision for the minimum standard, that is a half fare for men aged 65 and women aged 60, was included in the *Transport Act 2000* (introduced on 1 April 2001) and extended to men aged 60 by the *Travel Concessions (Eligibility) Act 2002*. The Assembly introduced its own commencement order for the 2002 Act.

Ministers made it clear that they expected all local authorities to meet the planned minimum standards for pensioners with effect from April 1999, on a voluntary basis, and money was provided by the Wales Office.⁸ On 20 April 2000 the Assembly Environment Secretary announced that free travel on local buses for pensioners and disabled people would be introduced from April 2002.⁹

Thus in Wales all pensioners and disabled people have had free travel since 1 April 2002. The scheme covers the whole of the country. The National Assembly provided an additional £17 million in 2002-03 for the free fare scheme with additional funding in 2003-04 to provide free travel for men over 60. This was the amount needed to provide the extra provision over and above that provided for in the 2000 legislation covering England and Wales.

⁴ "Nation-wide concessionary fares on the way", *The Scotsman*, 11 February 2000

⁵ If this had not been done, primary legislation would have been needed, as it was in England and Wales.

⁶ Scottish Executive press notice, "Free bus travel to go Scotland-wide", 22 December 2004

⁷ Scottish Executive press notice, "Smart cards for concessionary travellers", 15 March 2006

⁸ Wales Office press notice, ref W99005-Tr, 7 January 1999

⁹ Wales Office press notice, ref W00381-Tr, 20 April 2000,

E. Northern Ireland

In Northern Ireland people aged over 65 have had free travel on scheduled buses and trains within Northern Ireland since 1 October 2001 on production of a pass, obtainable free of charge. Previously they were entitled to a half fare. The pass can also be used to obtain a free travel concession on certain cross border bus and rail journeys. As both sexes are entitled to free travel at the same age, Northern Ireland was not affected by the human rights case.¹⁰ There are no plans to extend it to those aged 60 to 64.¹¹

Blind people and war pensioners receive free travel and other groups of people with disabilities are entitled to half fare travel.

The free cross border service is funded by the Republic and was introduced in July 1995. Officials in the Department of Regional Development in Northern Ireland and the Department of Social and Family Affairs in the Republic of Ireland are considering the implementation of an all-Ireland free travel scheme for pensioners.¹²

II Administration and funding of the current system

Concessionary fare schemes for local public transport are funded and administered by local government. As a result, the nature and extent of such concessions may vary from area to area depending on the local authority. The legislation provides a minimum concession and does not preclude local authorities from being more generous.

The most recent survey published by the Department for Transport in June 2006¹³ gave the following 'key results' in local bus concessions:

- December 2005, 42 authorities provided free bus travel for the elderly. Of these, 11 placed peak-time restrictions on travel, while the remainder allowed over-60s to travel for free at any time;
- Although the statutory scheme introduced in April 2006 only obliges local authorities to provide free travel off-peak, 114 authorities allowed unrestricted travel to over-60s in June 2006;
- In June 2006, 36 local authorities operated a smartcard scheme of bus passes. A smartcard, as defined in the survey, is a permit with a chip which can read and store travel data. The vast majority of the remainder operated a simple photocard scheme; and
- In June 2006, 168 local authorities offered enhanced schemes, or alternatives to the bus pass. Enhanced schemes available included (for a fee) the removal of peak-time restrictions from the concessionary scheme. Sometimes discounts

¹⁰ see footnote 2, above

¹¹ HC Deb 27 June 2005, c1322W

¹² HC Deb 3 December 2005, cc693-4W

¹³ DfT, *Public Transport Statistics Bulletin: 2006 Edition Supplement*, June 2006: http://www.dft.gov.uk/pgr/statistics/datatablespublications/public/annualbulletins/coll_publictransportstatisticsbu/publictransportstatisticsbul1828

were made available on Senior Citizens railcards. Alternatives offered often took the form of travel tokens for use on taxis, or use of particular rail routes.

In 2005 the Government estimated that there are 9.19 million pensioners in England (men aged 65 and over, women aged 60 and over) of which 1.79 million are eligible for free local bus travel. This represents 19.4 per cent of pensioners in England.¹⁴

The *Transport Act 1985* allowed concessionary fares on local buses even before the introduction of a statutory scheme. Local authorities are reimbursed from central government through the revenue support grant system.

The provision of concessionary travel schemes is cost-neutral on bus operators. Reimbursement arrangements under the 1985 legislation mean local authorities are obliged to reimburse bus operators for revenue foregone and to do so in such a way that bus operators are no worse or better off as a result of operating the scheme. Increased passenger numbers may be taken into account in the reimbursement arrangements.¹⁵

During the debate on the *Travel Concessions (Eligibility) Bill*, concern was expressed that local authorities might not be adequately recompensed for the cost of introducing the concessions and that the concessions, and those introduced by the *Transport Act 2000*, might lead to a reduction in service or to a reduction in other local authority services. Members and peers commented that there did not seem to be any definite information available about the effects of introducing the existing national scheme, but there did seem to be evidence that some local authorities were withdrawing their more generous travel schemes.¹⁶

The Government estimated at the time of the 2005 Budget that the additional cost of providing free travel on local bus services for pensioners and the disabled would be £420 million for 2006-07 (£350 million for English local authorities¹⁷ and the rest to Scotland and Wales) and £440 million for 2007/08.¹⁸ London is included in the £350 million.

The £350 million has been allocated to local authorities through the local government finance settlement. It was added to the Formula Grant total which is general (non ring-fenced) funding paid to local authorities for the services they provide. Although the funding is not hypothecated many local authorities have complained that the funding will be inadequate in their areas to fund concessionary travel because the formula is roughly proportionate to the number of older people in the area with no reference to existing bus use by the elderly in the area. A written answer revealed that 18 local authorities out of the 292 concession authorities had made representations to the Government about the funding for concessionary fares under the new formula.¹⁹

¹⁴ HC Deb 26 January 2005, cc347-8W

¹⁵ HC Deb 23 April 2002, c191W

¹⁶ HL Deb 24 July 2001, c1904; HL Deb 18 October 2001, c741

¹⁷ HC Deb 23 March 2005, c812W

¹⁸ *Budget 2005* (HC 372), March 2005, Table A1, p186:
http://www.hm-treasury.gov.uk/media/AA7/7A/bud05_chapA_146.pdf

¹⁹ HC Deb 22 March 2006, c377W; they are: Carlisle; Castle Morpeth; Chorley; Eden; Fareham; Gloucester; Guildford; Mid Suffolk; Pendle; Preston; Salisbury; Southampton; South Oxfordshire;

III The Bill

The *Concessionary Bus Travel Bill 2006-07* was introduced in the House of Lords on 27 November 2006. It finished its stages in the Lords on 5 February and was introduced in the House of Commons on 6 February.

The Bill and Explanatory Notes can be viewed, along with links to the relevant stages of the Bill's passage on the Parliament website.²⁰

The Bill has 16 clauses and three schedules.

The centrepiece of the Bill is the so-called 'national concession' which legislates for the changes announced by the Chancellor of the Exchequer in the 2006 Budget.²¹ This will mean that the over-60s and the disabled will be able to use local bus services anywhere in England. The Government will be supporting this with funding of up to £250 million.²²

Clauses 1, 2 and 3 of the Bill legislate for the national concession for journeys that begin outside London by replacing section 145 of the *Transport Act 2000* with a new section 145A and amending sections 146 and 149. Clause 3 amends the reimbursement system for operators by changing the criteria for reimbursement from being based on where a concessionee resides to depending on the area in which a concessionee's journey begins.

Clauses 4, 5, 6, and 7 legislate for journeys that begin within London by amending sections 240-243 of the *Greater London Authority Act 1999*. Together these clauses ensure that those not residing within London but beginning a journey within London are eligible for the national concession. Clause 5 ensures that London residents will be eligible for the national concession as the minimum should the reserve free travel scheme come into effect.

Clause 8 retains and slightly expands the power in section 147 of the 2000 Act for the Secretary of State to vary the scope of the scheme; for example, extending it to other groups such as schoolchildren or carers of disabled and elderly people; or removing the restriction on travel at peak times.

Clause 9 gives the Secretary of State the power to amend, by Order, the reimbursement and administrative arrangements of the national scheme. This means that, at some future date, a Secretary of State could centralise or 'nationalise' the scheme and run it from Whitehall, rather than via local authorities. It could, alternatively, allow for administration of the scheme at some interim level of local government. It would depend of course on the nature of any order put forward.

Tewkesbury; Three Rivers; Trafford/Greater Manchester Passenger Transport Authority; Torbay; and Tyne and Wear Passenger Transport Authority.

²⁰ http://www.publications.parliament.uk/pa/pabills/200607/concessionary_bus_travel.htm

²¹ For more information, see section on the *Concessionary Bus Travel Bill 2006/07*, above.

²² DfT press notice 025, "Nationwide free bus scheme for over 60s and disabled", 22 March 2006

Clause 10 will allow England (including London), Wales, Scotland and Northern Ireland to recognise one another's concessionary schemes. It is envisioned that it would not be used until such a time as practical problems, such as funding, have been solved. Reciprocity would also have to be flexible to account for the variations between schemes; unless it was not introduced until such a time as the various schemes became identical.

Remaining clauses are miscellaneous and supplemental.

IV Proceedings in the House of Lords

The Bill received its Second Reading in the House of Lords on 12 December 2006; it went through Grand Committee on 8 January 2007, Report stage on 29 January and Third Reading on 5 February. It was presented in the House of Commons with one substantial amendment on operator reimbursement, a modification to clause 9 following a recommendation by the Delegated Legislation Committee and other minor, drafting amendments.

The main areas that concerned the Lords during these debates are summarised below.

A. Smartcards

At Grand Committee the Liberal Democrats put down amendments to Clause 1 to put 'smartcards' alongside 'permits' on the face of the Bill. Lord Bradshaw explained that although smartcard technology might not be ready to introduce with the new nationwide scheme in April 2008, the benefits of using them would be significant and that, therefore, an indication of intent to utilise such technology should be implicit on the face of the Bill. He explained that smartcard technology would allow local authorities to accurately measure patronage and study travel patterns; over the longer term it should provide information which would allow the Secretary of State to make changes to the present subsidy arrangements:

We believe that permits are very outdated technology, and the opportunity should be taken to convert the permit currently in use in most places to a smartcard. This is worth doing for several reasons. It would reduce the opportunities for fraudulent use by passengers, by bus operators or by bus drivers.

More importantly, there is a need to obtain the maximum amount of useful and accurate information about bus journeys so that the subsidy available is accurately targeted. By subsidy, I mean all the public funding of bus services, and particularly the bus service operators' grant, which was formerly known as the fuel-duty rebate. The question of how the fuel-duty rebate might be replaced has been investigated at least twice—I think it has been investigated more often—on the assumption that the fuel-duty rebate, or the bus service operators' grant, is paid for the mileage operated, when we are in fact trying to subsidise people for carrying passengers. All attempts at reform have failed because of the considerable obstacle of very little reliable information about passenger mileage, and because any other way of making the information available would be bureaucratic and expensive to administer.

The introduction of smartcards, which are held by the passenger, and the necessary smartcard readers on buses would provide the opportunity to target the subsidy very accurately on the passenger carried. The smartcard is intelligent and, if necessary, would enable the facility of free travel to be available at particular times. Governments of whatever colour would find themselves paying for useful outputs rather than generalised inputs. That is a practical consideration in the targeting of a subsidy, whatever you are subsidising. You want to subsidise the benefit rather than the input.²³

Lord Hanningfield for the Conservatives supported the thrust of the amendments,²⁴ as did the Government Spokesman on Transport, Lord Davies of Oldham. He, however, made it clear that the amendments were not needed as the Secretary of State could use the powers in clause 1 of the Bill to amend the scheme following its introduction to make use of smartcards as well as, or in replacement of, permits.²⁵ Lord Hanningfield asked for a commitment from the Minister that the Department for Transport would work with local authorities sooner, rather than later, to develop the smartcard technology. Lord Davies gave him that assurance.²⁶

Lord Davies wrote to Lord Bradshaw on 18 January setting out in more detail what steps the Government is taking towards the provision of a nationwide smartcard system:

Such a scheme would of course require a national standard on smartcard technology in order to ensure inter-operability of passes. This standard exists and is known as the ITSO standard: the detailed technical specifications were published in 2004 under Crown copyright.²⁷ The Department has already been working with local authorities in various parts of the country to develop projects using ITSO. We are supporting the migration of three 'legacy' schemes, introduced before the development of ITSO, so that they comply with the ITSO standard. Cheshire, Nottinghamshire and Southampton's migration schemes are expected to be completed in the next 12 months.

We are also working with other local authorities developing ITSO pilot schemes in their areas. The first part of the NoWcard ITSO schemes in Cumbria and Lancashire, which we have supported through Rural Bus Challenge funding, went live in September 2006. One million journeys using smartcards had been completed by early December 2006. The Yorcard pilot in South Yorkshire will include the main bus operators in the area along with train services between Doncaster and Sheffield. A Departmental research programme will address the issues surrounding innovative ticketing products and citizens cards. The pilot is expected to run until December 2008.

In London, the Department has also been working with TfL and ATOC to agree the implementation of ITSO in the capital. This was supported by a Departmental research programme which included a successful trial of ITSO operating on a

²³ HL Deb 8 January 2007, c GC 1

²⁴ *ibid.*, c GC 2

²⁵ *ibid.*, c GC 3

²⁶ *ibid.*, c GC 5

²⁷ Available on the ITSO website at: <http://www.itso.org.uk/default.asp?ContentID=49>

number of buses in west London. Through further work, the Department will deliver ITSO compatibility with the Oyster network by January 2009.²⁸

Both the main opposition parties returned to the theme at Report stage and Third Reading, with emphasis on placing on the face of the Bill a requirement that the concessionary pass be ITSO compliant.²⁹ In both cases, Lord Davies stated that this was unnecessary as the Secretary of State already has the required powers:

Under current provisions, the Secretary of State can ensure that permits issued by local authorities both outside and within London are in a form which he stipulates. This can cover a unified appearance and ITSO compliance. This power to unify is undermined if an option is offered for local authorities instead simply to offer ITSO-compliant cards of whatever appearance, and regardless of any regulations issued by the Secretary of State.³⁰

B. Extension of the scheme

The House of Lords was interested in extending the scheme in terms of eligibility criteria, modes of transport and when it could be used. The Government's response was broadly the same against all of the arguments put forward: that it would not be suitable to extend the scheme beyond a statutory minimum in some areas, but not others, on the face of the Bill. The powers in clause 8 and clause 9 (discussed in more detail below) would allow the Secretary of State to amend the scheme by regulation at a later date subject to consultation. Local authorities remain free to extend the concession for journeys made in their areas as they see fit.

In Grand Committee Lord Hanningfield's amendment 3 was broadly drafted to probe the limits of the national scheme: why it only includes buses and is restricted to off-peak travel. In response, Lord Davies emphasised that the concession has always been a minimum concession only, on top of which local authorities are free to make extensions as they see fit, to suit local circumstances. To arbitrarily extend the scheme to cover all-day travel on all forms of public transport would add £400 million to the cost.³¹

Baroness Hanham's³² amendments 10 and 16 were intended to put a definition of 'disabled person' on the face of the Bill and to extend that definition to include those with mental health difficulties. Lord Davies argued that the definition of 'disabled person' in the 2000 Act was sufficient to transpose across to this Bill and that until the scheme was up and running it would not be sensible to seek to extend any definition of entitlement further.³³ Baroness Hanham also put down amendments to allow for the scheme to be extended to allow disabled persons to access alternatives to buses if buses were not

²⁸ Deposited Paper 07/211, 28 January 2007

²⁹ Report stage: HL Deb 29 January 2007, cc25-28; Third Reading: HL Deb 5 February 2007, cc486-488

³⁰ HL Deb 29 January 2007, c28

³¹ HL Deb 8 January 2007, c GC 9

³² Baroness Hanham is a Conservative peer

³³ HL Deb 8 January 2007, c GC 14

available or accessible; a similar amendment to allow for 'flexible' travel was put down by the cross-bench peer Baroness Finlay of Llandaff.³⁴

The baseline for the scheme as it stands is £250 million. In his letter to Lord Bradshaw, Lord Davies outlined the cost implications of extending the statutory minimum concession using "initial approximate figures":

- **Extension of the concession to the morning peak:** total cost of at least £84 million, consisting of £71 million for English-resident pass holders aged 60 and over living in England (outside London); £11 million for London-resident pass holders aged 60 and over travelling in London; and £2 million for disabled pass holders travelling in England (outside London);
- **Extension of the concession to additional modes:** £15 million for trams; £250 million for rail; and £25 million for community transport;
- **Extension of the concession to include carers of disabled people:** at least £9 million; it could be necessary to consider additional issues around fraud if the concession were extended in this way; and
- **Extension of concession to include people with a mental impairment:** an estimate would be difficult as it depends on how 'mental impairment' is defined, the Department's conservative estimate is that approximately two million people in England might be newly classed as eligible for concessionary travel on the grounds of a mental impairment; the estimated cost is at least £49 million.³⁵

The Lords returned to the theme at both Report stage and Third Reading, but following debate all proposed amendments were withdrawn.³⁶

C. Scheme funding and operator reimbursement

At Grand Committee stage, the Liberal Democrat peer Baroness Scott of Needham Market argued to a group of amendments designed to reform how the scheme would be funded. The Bill moves away from the current system and bases future funding on journeys beginning in each local authority. Baroness Scott discussed the two fundamental issues of funding: whether enough money will be available, and whether some local authorities will be disproportionately affected by the new scheme as they will have serious seasonal fluctuations (for example, in tourist towns during the summer).

The main thorn of contention is the present system of funding – the addition to the Formula Grant. Baroness Scott called it "a fairly crude instrument based on variable inputs such as population and demographics. What it does not measure is the main output; that is, the number of bus journeys made".³⁷ In effect, as the grant is not varied, a local authority could increase the number of passengers on its buses but not receive

³⁴ *ibid.*, cc GC 15-18

³⁵ *op cit.*, Deposited Paper 07/211

³⁶ Report stage: HL Deb 29 January 2007, cc14-25; Third Reading: HL Deb 5 February 2007, cc 480-486

³⁷ HL Deb 8 January 2007, cc GC 22-23

additional funding to cover the cost: a penalty for success.³⁸ Lord Hanningfield agreed that “the key principle must be that local councils are fully funded and suffer no financial risk”. In furtherance of that point he spoke to his own amendment 22 which would ensure that local authorities are compensated for any start-up costs associated with the new scheme.³⁹ The issue of allowing local authorities to reclaim administration costs was returned to at Third Reading and pressed to a vote. Lord Bradshaw’s amendment was defeated by 153 votes to 147.⁴⁰

Lord Davies set out the Government view in Grand Committee: that it is confident that the extra £250 million provided will be sufficient to fund the new scheme in full, although the Government has not yet entirely settled how the money would be distributed. He attempted to reassure the House that “the funding should follow the needs”. He also sought to explain the benefits of the shift in the Bill from reimbursement based on residence to start-journey locality:

Section 149 of the Transport Act 2000, as it would be amended by the Bill, will require travel concession authorities to reimburse operators for providing the national concession on journeys beginning in their area. The national concession must, under Section 145, be provided to those holding passes issued by any travel concession authority in England, as well as those issued under the London schemes. Hence, travel concession authorities will already be obliged to reimburse operators for trips begun in their area and made by concessionaires resident outside their area.

This approach renders the authority in which the eligible person resides totally irrelevant. This must be right under a national scheme. It also negates the need for unworkable billing arrangements whereby 300 local authorities could be billing each other for trips made by each other’s eligible residents. The whole Committee would react in horror to any such concept. We reacted in horror in advance of the concept being adumbrated in the Committee, which is why we are putting forward these proposals.⁴¹

Lord Davies also made it clear that, should circumstances require it, the Government would use the variation powers in clause 9 of the Bill to centralise the reimbursement system.⁴² This is discussed in more detail in the next section.

Their Lordships returned to the specific issue of the length of period that operators have to appeal against a scheme following its implementation at both Report stage and Third reading, with more success at the latter. Lord Bradshaw moved an amendment to extend the current period from 28 days to 56 days at both Report and Third Reading, his reasons for doing so were:

³⁸ The Department for Transport has a Public Service Agreement (PSA) Target to increase bus use by 12 per cent by 2010 in every region, compared to 2000 levels (*Departmental Annual Report 2006*, Cm 6817, p8)

³⁹ HL Deb 8 January 2007, c GC 24

⁴⁰ HL Deb 5 February 2007, cc489-494

⁴¹ HL Deb 8 January 2007, c GC 26

⁴² *ibid.*, c GC 27

The noble Lord said: My Lords, this is the last substantial amendment that we shall deal with today. There has been a great deal of disquiet over the period of 28 days within which operators who are dissatisfied with the agreement that they have reached with the local authority must notify the Secretary of State of their intention to appeal. That period is far too short; it almost means that people have to put the appeal in without any experience whatever of what is happening on the ground. I should have thought that it was reasonable to extend the period to at least 56 days so that there is a reasonable opportunity for a month of experience before an appeal is submitted. Of the appeals made already, a great many were withdrawn after they had been put in by operators who had no option but to put in an appeal as a sort of longstop until some experience was gained.⁴³

Although rejected by the Government at Report stage due to its being coupled with a change to the appeal response period, the amendment was accepted at Third Reading.⁴⁴

D. London

Section I, B above explains the concessionary fare arrangements in London and the 'reserve scheme' which comes into effect if Transport for London (TfL) and the London local authorities cannot agree a concessionary agreement for the coming year. The London Councils object to the system, as explained in a January 2007 press notice:

The Freedom Pass is paid for by London's boroughs through a mixture of national grant and local income, including the council tax. Currently the amount boroughs pay for providing the Pass is negotiated between London Councils and Transport for London (TfL).

However, if no agreement is reached by the end of each year, Transport for London has the power to dictate the amount boroughs have to pay without them having the opportunity to appeal against the decision. This power is known as the "reserve scheme".

Transport for London is the only transport operator in the country which can decide their own costs and slap them on local authorities. This is wrong and the legislation introducing the national bus travel concession is an opportunity to put it right.

London Councils wants the "reserve scheme" replaced with a fairer method which would allow the scheme to be rolled in to the next year if no agreement is reached. This safeguards the scheme for London's disabled and older residents but at a fair price for London's council taxpayers.⁴⁵

The London Mayor has accused the councils of wanting to 'water down' his powers and reduce the current, more generous, provision in London to the level of that in the rest of England.⁴⁶

⁴³ HL Deb 29 January 2007, cc39-40

⁴⁴ HL Deb 5 February 2007, cc488-489

⁴⁵ London Councils press notice, "Freedom pass safe in our hands", 30 January 2007

⁴⁶ London Mayor press notice, "Freedom pass guarantee must remain", 29 January 2007

At Grand Committee stage Lord Bradshaw moved a group of amendments to Clause 5 of the Bill which would replace the existing reserve scheme in London with arrangements to carry over the scheme for the existing year, with the approval of the Secretary of State. The Government rejected the amendment on the grounds that it would remove all fallback arrangements and leave Londoners without a guarantee of free fares. It was not pressed to a vote.⁴⁷ Lord Bradshaw returned to the theme at Report stage where he reintroduced his amendment to remove the London reserve scheme. His argument was that as TfL is the bus operator for London, this places it in a unique and overly-advantageous position vis the London local authorities:

Uniquely in London, the powers for local authorities to negotiate concessionary fares are underpinned by a reserve scheme, should the local authorities fail to reach agreement with Transport for London by 31 December each year for the following financial year. If a reserve scheme were invoked, Transport for London would determine the cost of the scheme. We have to bear in mind that Transport for London is the bus operator. London boroughs are therefore at a disadvantage when negotiating with Transport for London. In no other part of the country does the bus provider have so much power. In effect, Transport for London is able to call the shots, when elsewhere in the country concessionary fare schemes are determined by local authorities, subject to appeal to the Secretary of State.⁴⁸

He also made the point that the reserve system has never been used. The Government, however, agreed with the position taken by the Mayor of London and resisted the amendment:

The structure in place under the Greater London Authority Act, with which the Bill does not interfere, guarantees that that process can take place. But if breakdown fails, the reserve power has the supreme virtue of reaching the end position to which all of us who have contributed to debates on this Bill have subscribed—namely, that concessionary fares and the geographical extent of them is an excellent concept. Of course, we all applaud the fact that London has been very much in the van of all this work.

I hear what the noble Lord has said but I am not persuaded. I recognise the interests that he represents, and it would be far from me to do anything other than respect those interests. But there is a difficulty with regard to the amendment, and on this occasion I have not the slightest hesitation in siding with the Mayor of London in saying that he needs the reserve power to guarantee that concessionary fares obtain in the capital.⁴⁹

E. Power of variation

Lord Hanningfield argued in Grand Committee that concessionary fares are fundamentally local schemes and should be administered locally, albeit that the funding is provided centrally. His amendments 35 and 36 were probing amendments designed to discover the Government's reasons for introducing Clause 9 of the Bill which gives the

⁴⁷ HL Deb 8 January 2007, c GC 29-31

⁴⁸ HL Deb 29 January 2007, c36

⁴⁹ HL Deb 29 January 2007, c38

Secretary of State power of variation over the scheme once it has come into force. He wanted to know:

...the reason why the Government feel the need to keep such a power, albeit in reserve, in the Bill. I would also be grateful if the Minister could explain in what circumstances the Secretary of State would consider using such a power to take over the running of a national concessionary scheme.⁵⁰

Lord Bradshaw disagreed with the Conservative amendments and offered Scotland and Wales as examples where concessionary schemes are well-run by the central administration, rather than at local authority level.⁵¹

In response, Lord Davies made several points. He stated that the Government has “no intention of implementing a national scheme on the basis of the Secretary of State’s taking responsibility for it”. His subsequent remarks, however, appeared to water down that guarantee and gave no assurances for what might be desirable in the future:

Full centralisation would provide greater consistency in the level of reimbursement made to operators, which is why they are interested in it. But we have not accepted the argument that we need to implement the scheme on a centralised basis and do not intend to work that way if and when the Bill becomes law. We think it is right to preserve the power because to remove it would remove flexibility from the Bill against a background where we are not, and cannot be, entirely sure that the national scheme can be implemented on the basis of such a large number of potential negotiations being carried out ... We will see how it goes. We merely think it wise to have a power for the Secretary of State within the framework of the Bill in case such arrangements do not work out.⁵²

There was also some uncertainty about how what had previously been local negotiations with bus operators would work in the future. Lord Davies said:

I have not the slightest doubt that local authorities will see that it is in their interest, when they are dealing with a body like National Express, for some negotiations to take place on a broader basis than just each individual authority. In the first instance we are looking for the arrangements to be derived on that basis rather than a national scheme implemented by the Secretary of State. While I cannot quite call it a reserve power in the Bill, the Committee will recognise that we have here the potential for the Secretary of State to take responsibility for the scheme if we are not successful with our other arrangements.⁵³

Between Grand Committee stage and later Lords stages the Government gave its response to the report by the Delegated Powers and Regulatory Reform Committee into the Bill. The Committee’s report was published in December 2006. It commented on

⁵⁰ HL Deb 8 January 2007, c GC 32

⁵¹ *ibid.*, c GC 32

⁵² *ibid.*, c GC 33-34

⁵³ *ibid.*, c GC 34

clauses 8 and 9 of the Bill and recommended that the power of variation in clause 9 be better defined and subject to Parliamentary agreement:

... it would be preferable if the bill specified the matters in respect of which regulations could be made under clause 9(3)(g) and secured that any regulations made in exercise of the power conferred by the order must be subject to a parliamentary procedure.⁵⁴

In his response to the Committee, Lord Davies of Oldham announced that the Government would table an amendment to the Bill to implement the changes that the Committee suggested.⁵⁵ The change was agreed and added to the Bill at Report stage.⁵⁶

⁵⁴ HL Delegated Powers Committee, *3^d report of session 2006-07* (HL Paper 19), 14 December 2006, para 13

⁵⁵ HL Delegated Powers Committee, *5th report of session 2006-07* (HL Paper 44), 5 February 2007, appendix 4

⁵⁶ Amendment 24, HL Deb 29 January 2007, cc13-14 and c39