

<b>Title:</b> Changes to bus service registration and short notice applications to improve competition in the bus market <b>IA No:</b> DfT00262 <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> Traffic Commissioners VOSA	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 12/12/2013				
	<b>Stage:</b> Consultation				
	<b>Source of intervention:</b> Domestic				
	<b>Type of measure:</b> Secondary legislation				
<b>Contact for enquiries:</b> Laura Teale, Department for Transport <a href="mailto:Laura.Teale@df.t.gsi.gov.uk">Laura.Teale@df.t.gsi.gov.uk</a>					
<b>Summary: Intervention and Options</b>					<b>RPC:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NQ	NQ	NQ	Yes	Zero Net Cost

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

The local bus market outside of London is deregulated, with competition expected to take place on bus routes. However, a Competition Commission (CC) inquiry found that there was insufficient competition in the local bus market, leading to adverse effects such as high fares and poor services. There are two separate IA's that deal with the main CC remedies around increasing notice periods and frequent services, however this IA deals with the need to intervene to close potential loop holes that would allow operators to circumvent the other remedies. When an operator makes an application to register or vary a service this cannot come into effect until a specified notice period has passed. The remedy to increase the notice period is dealt with in a separate IA, however the problem remains that during this notice period the operator could make a further application to vary the same registration. The CC identified that this could lead to the new entrant and the incumbent acting in a 'tit for tat' manner by continually making variation applications to a service/variation that has not come into effect. They also found the existing short-notice application rules allow operators to take advantage of the rules in a way that could allow anti-competitive behaviour to remain. They concluded Government intervention was necessary to ensure that the main remedies are not circumvented so that they are implemented in a way that achieves the desired effects.

**What are the policy objectives and the intended effects?**

The aim is to reduce the threat of post-entry anti-competitive behaviour by incumbent operators, which deters new operators from entering and expanding into a market. The measure would place a restriction on making changes to an existing registration application that has yet to come into effect except through a short-notice application and remove the ability to apply for a short-notice application when the timetable is changed by no more than 10 minutes. This should ensure that operators do not circumvent the other CC remedies the department is implementing to ensure competition in the market is fair.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The Competition Commission considered the need for regulation as part of its inquiry into the market for local bus services. After considering various remedies, they decided simple universal rules were the most effective way of addressing the adverse effect on competition. The following policy options are considered:

**Option 1** – Restricting operators from making changes to any registration application during any notice period except by making a short-notice application.

**Option 2** - Remove the ability for operators to apply for a short-notice variation application when the service timetable was to be changed by no more than 10 minutes earlier or later than registered.

**Option 3** – A combination of policy options 1 and 2

Option 3 is the preferred option as both of the remedies are needed to secure the competition benefits.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 10/2019

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister:

Baroness Kramer

Date:

10/02/2014

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce regulation restricting operators from making changes to any registration application during any notice period except through a short-notice application.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	NQ		NQ		NQ
High	NQ		NQ		NQ
Best Estimate	NQ		NQ		NQ
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
Costs have not been able to be monetised at this stage of policy development process.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Increased cost to VOSA through an additional check required to ensure applications do not overlap. There could be an increased cost to VOSA due to more short notice applications, although VOSA doesn't think this will be significant. VOSA have estimated that short notice applications take approximately one more hour of a staff member's time compared with a standard application. Increased cost to operators as they may have less flexibility in their ability to change their routes.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	NQ		NQ		NQ
High	NQ		NQ		NQ
Best Estimate	NQ		NQ		NQ
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
Benefits have not been able to be monetised at this stage of policy development process.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Operators (mostly new entrants) should also benefit from being able to compete in new markets without the fear of tit-for-tat retaliation from incumbent operators. Without the fear of tit-for-tat retaliation, operators should have greater certainty of income and this could lead to more investment/optimisation of pricing strategies etc. Passengers may benefit from lower fares and better quality bus services that come from increased competition in the bus market.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
There is a small risk that the short notice application eligibility rules may not be sufficient to ensure operators are able to respond to changing market conditions quickly.					3.5

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> NQ	<b>Benefits:</b> NQ	<b>Net:</b> NQ	Yes	Zero net cost

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Introduce regulations removing the ability for operators to apply for a short-notice variation application when the service timetable was to be changed by no more than 10 minutes earlier or later than registered.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

### Description and scale of key monetised costs by 'main affected groups'

Costs have not been able to be monetised at this stage of policy development process.

### Other key non-monetised costs by 'main affected groups'

More refusals for short notice applications would require increased staff working hours for VOSA. Less flexibility for operators who are no longer able to apply for a short-notice application when the service timetable was changed by no more than 10 minutes earlier or later than registered.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

Benefits have not been able to be monetised at this stage of policy development process.

### Other key non-monetised benefits by 'main affected groups'

Operators (mostly new entrants) should benefit by being able to compete in new markets. Operators may have less flexibility in changing their services which will benefit passengers as they wont have to adjust their travel patterns as much. Passengers may benefit from lower fares and better quality bus services that come from increased competition in the bus market.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

There is a small risk that the short notice application eligibility rules may not be sufficient to ensure operators are able to respond to changing market conditions quickly.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	Yes	Zero net cost

## Summary: Analysis & Evidence

## Policy Option 3

**Description:** Introduce regulations placing a restriction on making changes to any registration application during any notice period except by making a short-notice application and remove the ability for operators to apply for a short-notice application when the service timetable was to be changed by no more than 10 minutes earlier or later than registered.

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
<b>COSTS (£m)</b>		<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)	
Low		NQ	NQ	NQ	
High		NQ	NQ	NQ	
Best Estimate		NQ	NQ	NQ	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
Costs have not been able to be monetised at this stage of policy development process.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
There may be a cost to VOSA through increased use of short notice applications which they estimated take approximately one more hour of a staff member's time compared with a standard application. VOSA does not think this cost would be significant. VOSA would also have to do an additional check to ensure applications do not overlap. Incumbent operators would have less flexibility as they would no longer be able to apply for short notice applications when the timetable is changed by no more than 10 minutes.					
<b>BENEFITS (£m)</b>		<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)	
Low		NQ	NQ	NQ	
High		NQ	NQ	NQ	
Best Estimate		NQ	NQ	NQ	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
Benefits have not been able to be monetised at this stage of policy development process.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Operators (mostly new entrants) should also benefit from being able to compete in new markets, without the fear of tit-for-tat retaliation from incumbent operators. Operators should have less flexibility in changing their services which may benefit passengers as they won't have to adjust their travel patterns as much. Passengers may benefit from lower fares and better quality bus services that come from increased competition in the bus market.					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	3.5
There is a small risk that the short notice application eligibility rules may not be sufficient to ensure operators are able to respond to changing market conditions quickly.					

### BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	Yes	Zero net cost

## Evidence Base (for summary sheets)

### Current Legislation

The arrangements for the registration of local bus services are set out in the Transport Act 1985, Section 6 of The Transport Act 2000 and in the Public Service Vehicles (Registration of Local Services) Regulations 1986 (SI 1986/1671) as amended by SI 1988/1879, SI 1989/1064, SI 1994/3271, SI 2002/182 and SI 2004/10 in England and Wales.

The Vehicle and Operator Services Agency (VOSA) who process bus registration applications under delegated authority from the Traffic Commissioners also produced the 'Local Bus Service Registration; Guide for Operators' (PSV 353A) in October 2008 which sets out the requirements for local bus service registration in England. One of the requirements is that an operator must give (in most cases) at least 56 days notice before the start of the service (the '56 day' rule). The 56 day period begins on the day the Traffic Commissioner accepts the registration. The same notification period applies if the operator intends to cancel or change particular services, although in specified exceptional circumstances, services can be registered, cancelled or changed with less than 56 days notice subject to the agreement of the Traffic Commissioner (a 'short notice application').

The regulations require operators to provide the copy of the timetable they intend to operate to the Traffic Commissioner as part of their application. However, where the interval between journeys is 10 minutes or less, the service may simply be classified as 'frequent' and a timetable is not required.

The following sets out the process for registering/changing/cancelling a route is given:

- The operator submits a registration application to introduce, vary or deregister a route to the Traffic Commissioner, and provides a copy to the relevant local authority(ies) at least 56 days prior to commencement.
- When a route is being deregistered or reduced, the local authority spend approximately two weeks analysing the impact and determining if a replacement is necessary.
- When a local authority identifies a replacement service is needed the authority will prepare an emergency contract and invite tendered bids to run the service.
- Once a contract has been tendered, information on changes to the service can be disseminated to passengers and to Traveline.

Alongside the measures proposed in the following impact assessment, the Competition Commission (CC) has recommended that a 14-day pre-notification period is given to local authorities by operators prior to any registration application to enable them to review and comment on the proposals and a minimum 90 days notification period for variations to an existing service registration. The remedies covered by this impact assessment were proposed to prevent circumvention of the remedies extending notice periods.

### Background / Problem under consideration

The local bus market outside of London has been deregulated since 1986 with approximately 80% of services operating commercially with the remainder being tendered by local authorities. Competition on commercial services is expected to take place 'on-the-road' where any bus operator can run a service on any route. Operators are expected to compete on fares and service quality.

The CC led an investigation into the local bus market where in their final report (published on 20 December 2011) confirmed that there is a lack of sustained head-to-head competition between bus operators in many local markets and also a lack of potential competition. One of the main reasons was:

- there are particular barriers to both new entrants into the market and incumbents that wish to expand into new areas of the market – particularly large-scale expansion – including the threat of retaliatory and predatory behaviour,

In the view of the CC, this lack of competition in the commercial and tendered market can result in a combination of higher fares, fewer services and lower quality services. The CC estimated that, overall, the annual detriment to consumers and taxpayers caused by the lack of competition identified is in the range of £115m to £305m.

In its remedies, the Competition Commission proposed four changes as set out below to the bus service registration requirements to address the adverse effect on competition (AEC) which its inquiry had identified.

1. Require bus operators to give 14 days notice to a local authority within whose area a bus service is being registered, changed or cancelled, before the application is submitted to the Traffic Commissioner;
2. Require bus operators to give a minimum of 90 days notice (increased from the current 56 days) to the Traffic Commissioner of a change to an existing service registration;
3. Restrict changes to any registration application during any notice period except by making a short-notice application and align the reasons for making short notice applications with those in Scotland;
4. Require bus operators to specify the frequency of services currently registered as 'frequent' (those with six or more journeys per hour).

The CC remedies seek to constrain the ability of operators to make rapid and frequent changes to service frequencies. As a result an operator seeking to enter or expand services in competition with an incumbent operator would expect less opportunity for 'tit-for-tat' reactions and hence lower barriers to entry or expansion. The third remedy, which is needed to ensure that existing arrangements do not allow operators to circumvent the other remedies, has been considered in this Impact Assessment. A further two IAs consider the other remedies. One IA (DfT00238) assesses the first and second remedies and the other IA the fourth remedy. The first and second remedies aim to reduce predatory behaviour by incumbent operators by extending the bus registration notice periods. The first remedy also provides local authorities with more time to consider the implications of a bus service registration application, particularly in cases where a service is being withdrawn. The fourth remedy aims to reduce anti-competitive behaviour by preventing an incumbent operator of a frequent service (6 or more buses an hour) flooding the route with more buses in response to a new competitor.

## Rationale for intervention

It is the view of the CC that the adverse effects on competition from predatory behaviour, is significant enough to justify further government intervention. The local bus market suffers from retaliatory behaviour where incumbent bus operators respond to the entrance of a rival operator by charging excessively low fares (lower than their operating costs), or by creating overcapacity (through increasing frequency), in an attempt to force the rival's exit from the market. The incumbent and rival operators both incur short-term losses until one operator (usually the new entrant) exits the market. The incumbent may also change their timetable to ensure their buses arrive slightly before rival buses, capturing the majority of passengers.

The threat of post-entry retaliation is enough to deter operators from entering or expanding into new markets, and is therefore a barrier to entry. As a result, incumbent operators are able to charge high fares and provide poor services. On the rare occasion a new operator does attempt to compete, there is a short-period of very intense competition that is not sustained, which has a negative impact on passengers who experience service and price instability.

The Competition Commission recommended that the policy options in this IA were needed to prevent circumvention of other remedies recommended in their competition report, which are being introduced by the Department. The policy options in themselves should provide some disincentive for incumbent operators to act in an anticompetitive manner.

The CC found that the ability to make an application to change a bus service registration at any time provided the opportunity for operators to respond in a 'tit for tat' manner in response to entry by registering changes to a service that had not yet come into operation. The Competition Commission also believed that the existing ability to make a short-notice application where the service timetable was changed by no more than 10 minutes provided operators with the ability to circumvent the other remedies being proposed to move barriers to entry and expansion into a market.

The CC concluded that Government intervention is necessary to ensure that the remedies proposed in the other IAs are implemented effectively.

## Policy objective

The main aim of the policy is to reduce the predatory behaviour by incumbent bus operators described above. This is intended to have two effects:

1. Increase competition within the local bus market by reducing entry barriers resulting from predatory behaviour.
2. Improve service and price stability, benefitting passengers who are negatively affected by unanticipated price changes and delays from out of date timetables.

## Description of options considered

### Do nothing

Allowing operators to continue making overlapping applications could reduce the effectiveness of the other CC remedies in preventing predatory behaviour and could possibly enable circumvention of the remedies.

### **Policy option 1 – Introduce regulation restricting operators from making changes to any registration application during any notice period except through a short-notice application.**

Under this policy option, during the notice period of a bus service registration (whether to start, change or cancel a service), the operator would be prevented from making changes to the registration unless it is through a short notice registration. The CC concluded that doing this would prevent operators from making tit-for-tat reactions to their competitors, whilst still giving them the flexibility of making changes to the registration for legitimate reasons (through short notice registrations). So under the new rules proposed by the CC the following 'tit for tat' situation would be prevented:

“Having given 14 days’ notice to the local authority, an entrant registers a new service and gives 56 days’ notice to the Traffic Commissioner. In response, the incumbent, having given 14 days’ notice to the local authority, registers a change to take place in 90 days. This registration prompts the new entrant to make a change to its original application. This application to change the service is submitted before the operator has started running the originally registered service. The incumbent may then react to this before the change to its own service takes place and so on.”

### **Policy option 2 - Introduce regulation removing the ability for operators to apply for a short-notice variation application when the service timetable was to be changed by no more than 10 minutes earlier or later than registered.**

Under this policy option, operators would no longer be able to apply to the Traffic Commissioner for a short-notice registration in instances where the service timetable was to be changed by no more than 10 minutes earlier or later. The CC concluded that by including this restriction on short-notice applications the scope for circumvention of the remedy set out in policy option 1 and other CC remedies is reduced.

### **Policy option 3 – Introduce regulation restricting operators from making changes to any registration application during any notice period except through a short-notice application and remove the ability for operators to apply for a short-notice application when the service timetable was to be changed by no more than 10 minutes earlier or later than registered.**

Under this policy option, both of the CC remedies set out in policy options 1 and 2 would be implemented. Policy option 3, in combination with the other bus market remedies proposed by the CC, should ensure that bus operators are prevented from undertaking in predatory behaviour and would thus improve competition.



# Monetised and non-monetised costs

At this stage in the policy development process, the costs and benefits of the proposals have not been monetised. However, the key stakeholders affected by the policy options have been identified and the scale of the effect has also been assessed. Annually there are around 17,000 bus service registration applications (new, variations and cancellations) on average 13% are short-notice applications.

## Policy option 1

### Costs

Policy option 1 would still result in short notice applications but there is nothing to suggest it would increase in a significant manner, as most short notice applications are made as a result of an error in the original submitted registration. There would be no anticipated additional cost to VOSA as the £60<sup>1</sup> in theory pays for the service provided. Conversations with VOSA suggest a short notice application takes approximately one extra hour of a staff member's time compared with a standard application (i.e. in addition to the £60).

Operators may be left operating a service that is not viable or profitable for a longer period of time than what would have been the case. This may also have a cost to customers as there may be an increase in uncertainty or confusion. As operators may have to run a local service to a timetable for a longer period of time, customers may miss out on connecting public transport provision or be late for school/work. This could lead to an increase in journey times. This may also lead to an increase in staff costs to deal with complaints.

The policy option may also lead to costs for VOSA when processing standard applications, as they would be required to check whether it overlaps an existing registration application notice period. These costs are not expected to be significant.

### Benefits

Passengers may benefit from more stability on bus routes with operators being prevented from implementing rapid successive changes to their bus services. The reduced scope for predatory behaviour may lead to new operators benefitting from lower barriers to entry into routes. This may benefit passengers in the form of lower fares and a better quality service.

The intention of the policy is to reduce the ability of operators to act anti-competitively, by reducing the time period in which operators can react and change their bus routes, operators would need to think more carefully about changes to route registrations and may not be able to retaliate in a tit-for-tat fashion. This may benefit bus users as they will use more stable bus services.

## Policy option 2

### Costs

VOSA have stated that operators apply for short notice changes under unforeseen circumstances. Therefore there is unlikely to be a change in the number of applications. There may be a cost to VOSA as the proposal could lead to more refusals for short notice applications which would require increased staff working hours. However VOSA do not consider that there will be a significant financial burden to them for this.

There may be less flexibility for operators to adjust to changing market conditions as they would no longer be able to make a short notice application in instances where the service timetable was to be changed by no more than 10 minutes earlier or later. Instead they would have to provide evidence to the Traffic Commissioner that it was needed to meet an urgent and exceptional public passenger transport requirement. Otherwise they would have to make a standard variation application.

Operators may be left operating a service that is not viable or profitable for a longer period of time than what would have been the case. This may also have a cost to customers as there may be an increase in uncertainty or confusion. As operators may have to run a local service to a timetable for a longer period

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<sup>1</sup> Based on the fee charged by VOSA to bus operators for a registration application

of time, customers may miss out on connecting public transport provision or be late for school/work. If this was the case then there may be an increase in staff costs to deal with complaints.

## **Benefits**

Operators would not be able to make short-notice applications in instances where the service timetable was to be changed by no more than 10 minutes earlier or later, preventing an incumbent operator from circumventing the increased 90 day notice period for variations to service. This should reduce 'tit for tat' responses from operators. New operators may benefit as this should reduce the ability of incumbent operators to act in an anti-competitive way. New operators can then mature their routes.

Operators should have less of an incentive or ability to change their bus routes. This may result in more consistent bus services which would benefit bus users as they would not have to adjust their travel patterns as a result of changing timetables.

## **Policy option 3**

### **Costs**

VOSA have stated that nearly all short notice applications are a result of an error made when submitting the registration and virtually all currently result in a short notice request using the grounds of unforeseen circumstance. Policy option 1 would still result in short notice applications but there is nothing to suggest it will increase in a significant manner. There should be no anticipated additional cost to VOSA as the £60<sup>2</sup> in theory pays for the service provided. Conversations with VOSA suggest a short notice application takes approximately one extra hour of a staff member's time compared with a standard application (i.e. in addition to the £60).

There may be less flexibility for operators to adjust to changing market conditions as they would no longer be able to make a short notice application in instances where the service timetable was to be changed by no more than 10 minutes earlier or later. Instead they would have to provide evidence to the Traffic Commissioner that it was needed to meet an urgent and exceptional public passenger transport requirement. Otherwise they would have to make a standard variation application.

Operators may be left operating a service that is not viable or profitable for a longer period of time than what would have been the case. This may also have a cost to customers as there may be an increase in uncertainty or confusion. As operators may have to run a local service to a timetable for a longer period of time, customers may miss out on connecting public transport provision or be late for school/work. This could lead to an increase in journey times. This may also lead to an increase in staff costs to deal with complaints.

The policy option would also lead to costs for VOSA when processing standard applications, as they will be required to check whether it overlaps an existing registration application notice period. These costs are not expected to be significant.

### **Benefits**

Operators would not be able to make short-notice applications in instances where the service timetable was to be changed by no more than 10 minutes earlier or later, preventing an incumbent operator from circumventing the increased 90 day notice period for variations to services. This should reduce 'tit for tat' responses from operators. New operators may benefit as this should reduce the ability of incumbent operators acting in an anti-competitive way. The new operators can then mature their routes.

Operators should have less of an incentive or ability to change their bus routes. This could result in more consistent bus services which would benefit bus users as they would not have to adjust their travel patterns as a result of changing timetables.

Passengers should benefit from more stability on bus routes with operators being prevented from implementing rapid successive changes to their bus services. The reduced scope for predatory behaviour should lead to new operators benefitting from lower barriers to entry into routes. This may benefit passengers in the form of lower fares and a better quality service.

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<sup>2</sup> Based on the fee charged by VOSA to bus operators for a registration application

## Rationale and evidence

Currently, the evidence behind the costs of the policy has been provided by VOSA, though these are rough estimates.

The current level of analysis has only identified the main stakeholders affected by the policy and whether they will incur a cost or benefit from the policy. Where possible, the scale of the cost has been described. However, as this is a consultation stage impact assessment and a lot of the details of the policy are yet to be decided, it has been deemed disproportionate to request detailed cost and benefit estimates from VOSA.

The Department is aware that there is a lack of evidence of the impacts of the options in this IA. It is the Departments aim that through consultation we will explore with industry whether it is possible to address some of these gaps and to ascertain whether the costs are minimal.

## Risks and assumptions

As only short notice applications will be able to be made during an existing registration, there is a risk that this may not be enough for operators to adjust to changing market conditions. Therefore there is a risk that if operators cannot adjust quickly to market changing conditions that this may reduce the number of operators in the market. This could also have an adverse impact on bus users as they will not be getting the service that they are demanding from bus operators. There is a chance this may increase journey times for travellers if a bus is a part of a connecting journey.

## One-in, Two-out

This proposal is in scope of OITO as it is changing the regulation bus operators have to adhere to when making registration changes, in particular short notice applications.

There are direct costs that would be a burden to operators as a result of this, therefore this IA would be included as an IN within the scope of OITO. At this time we do not have the information needed to calculate the EANCB. However, section 1.9.14 of the Better Regulation Framework Manual July 2013 state that “Measures which increase competition can reasonably be expected to drive economic growth and benefit society. Therefore, where such measures are primarily intended to promote competition, any impacts related specifically to the competition aspects of the proposals should be scored as a zero net cost for the purposes of OITO. “ To qualify as a pro-competition measure the regulation must answer positively to the four questions which are addressed in Annex 2. This demonstrates that positive answers are given in relation to each of the criteria for the whole proposal. Therefore, this measure should be classed as a Zero Net Cost measure for OITO purposes.

## Wider impacts

### **Competition Assessment**

The policy is intended to prevent predatory behaviour on the part of incumbent operators by delaying their response to an entrant until the new operator has had time to establish a market presence. The policy also helps prevent short term intense and unsustainable competition, where both operators rapidly respond to one another making large losses and usually leading to the exit of one operator.

By preventing these forms of undesirable behaviour, the policy reduces the barriers to entry into a market. This makes new entrants more comfortable entering a market, increasing competition to the benefit of passengers. Also, when this competition happens, it is more likely to be sustained.

The short notice eligibility rules should ensure that incumbent operators still have the flexibility to change bus service registrations for legitimate reasons (such as changing demand).

## **Small and Micro Business Assessment**

Some small and micro-businesses would be affected, but there are no plans to exempt small operators as the CC recommended universal, rather than tailored, rules. This might indicate that making the policy compulsory would impact on smaller operators more as they have less resource. However, the policy will not affect all small operators. The majority run only tendered services where the timetable is agreed with the local authority prior to the registration of the service and so they should not need to make any subsequent changes prior to the service starting. The CC remedy requiring operators to provide a 14-day pre-notification period to local authorities should also mitigate any errors occurring on a bus service registration for tendered services, as these should be identified then. DfT statistics suggest that 9% of tendered kilometres are run by small size operators compared to just 3% of commercial kilometres which are operated by small operators.

## **Environmental impacts**

### **Greenhouse gas assessment**

These proposals are not intended to have any effect on the number of bus services and therefore we do not anticipate any effect on greenhouse gas emissions.

### **Wider environmental issues**

As above

## **Social impacts**

### **Health and well-being**

Having reviewed the screening questions for the Health Impact Assessment we have concluded that there is no need for a full assessment to be carried out.

### **Human rights**

We do not consider that these proposals will impact on human rights legislation.

### **Justice system**

These proposals do not create any new sanctions or amend existing ones so we do not consider there to be an impact on the justice system.

## **Sustainable development**

We do not consider these proposals to impact on sustainable development.

## **Summary and preferred option**

In its remedies, the Competition Commission proposed four changes as set out below to the bus service registration requirements to address the adverse effect on competition (AEC) which its inquiry had identified. The third remedy has been considered in this Impact Assessment, the others are considered in separate ones.

1. Require bus operators to give 14 days notice to a local authority within whose area a bus service is being registered, changed or cancelled, before the application is submitted to the Traffic Commissioner;
2. Require bus operators to give a minimum of 90 days notice (increased from the current 56 days) to the Traffic Commissioner of a change to an existing service registration;
3. Restrict changes to any registration application during any notice period except by making a short-notice application and align the reasons for making short notice applications with those in Scotland;
4. Require bus operators to specify the frequency of services currently registered as 'frequent' (those with six or more journeys per hour).

The changes discussed in this IA are required to support the effective implementation of the other remedies listed above and to ensure that there is fair and open competition in the bus market for operators of all sizes. Changes to regulations are necessary because the registration process is set out in legislation. It would not be appropriate to waive the requirements for small businesses as the regulations are necessary to allow fair competition between operators of all sizes and provide safeguards to passengers and local authorities.

The remedies are intended to work together as a package and we therefore intend to introduce them at the same time, in October 2014.

Our preferred option is policy option 3, which implements both aspects of the third CC remedy, as it should help to ensure that the other bus market remedies proposed by the CC cannot be circumvented and in combination with the other remedies should help ensure that bus operators are prevented from undertaking in predatory behaviour and thus limiting competition. If only either option 1 or 2 were adopted then only one aspect of the third CC remedy would be implemented and so the potential would still exist for operators to circumvent to some extent the other CC remedies detailed above.

# Annexes

## Annex 1: Post Implementation Review (PIR) Plan

We will include a clause in the amended regulations to review the effect of the changes to the bus service registration requirements after five years (October 2019). This is in accordance with the Government's broader policy on reviewing new regulation. The Government has undertaken to include clauses in new regulations so that regulatory measures are reviewed regularly to ensure that they are still needed and are not imposing disproportionate burdens.

The Department will carry out a review of these Regulations and set out the conclusions of the review in a report which will be published. The report will set out the objectives which the changes established by the Regulations to the regulatory system were intended to achieve, assess the extent to which those objectives have been achieved, and whether they remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

## Annex 2: Pro-Competition Criteria

### Pro Competition Measure

The intention of introducing this regulation is to improve competition in the bus market. This will be done by restricting the ability of operators to act anti-competitively. The Better Regulation Framework Manual July 2013 state that impacts specifically related to the competition aspects of the proposal can be scored as zero net cost for the purposes of OTO. To qualify as a pro-competition measure the regulation must answer positively to the following four questions.

**i. Is the measure expected to promote competition? Promoting competition can be achieved through any of the following mechanisms:**

- **Directly increasing the number or range of sustainable suppliers**
- **Indirectly increasing the number or range of sustainable suppliers**
- **Strengthening the ability of suppliers to compete**
- **Increasing suppliers' incentives to compete vigorously**

The purpose of the measure is to prevent predatory behaviour from incumbent operators. This will be done by delaying their response to a new entrant until that new operator has had time to establish a market presence. The policy also helps prevent short term intense and unsustainable competition, where both operators rapidly respond to one another making large losses and usually leading to the exit of one operator. By making the market more contestable this will increase the incentives for operators to compete vigorously.

**ii. Is the net impact expected to be an increase in competition (i.e. if a policy fulfils one of the criteria but results in a weakened position against another)?**

It is expected that by preventing operators from being able to change their registration during the notice period they are less likely to act in an anti-competitive nature to new operators joining the market. This reduces tit-for-tat reactive policies that have happened previously. The policy options are intended to prevent predatory behaviour on the part of incumbent operators by delaying their response to an entrant until the new operator has had time to establish a market presence. By reducing the barriers to entry and making the market more contestable, more operators may join the market or operators in the market may act in a more competitive fashion.

A consequence of the policy is that operators may be slower at responding to changing market conditions; this could have an effect on the competitiveness of the bus industry. Operators with small profit margin may not be able to afford the period where they cannot adjust to the changed market conditions. However the short notice eligibility rules should ensure that operators maintain a short term ability to adjust to significant changing conditions.

It is expected that the net impact will be positive with regards to competition.

**iii. Is promoting competition the primary expected impact of the policy?**

Yes, the main intention of this measure is to reduce the threat of post-entry anti-competitive behaviour by incumbent operators which deters operators from entering and expanding into a market. Limiting the ability of incumbent operators to make changes to registered services should ensure that competition in the market remains fair. The Office for Fair Trading recommended the bus industry to the Competition Commission due to the anti-competitive behaviour of firms. This measure is based the recommendations provided by the Competition Commission report, which are all aimed at increasing competition in the market.

**iv. Would it be reasonable to expect a net social benefit from the policy (i.e. benefits to outweigh costs), even where all the impacts may not be monetised?**

There is unlikely to be any significant costs to VOSA as a result of this policy. There may be costs to operators and bus users as operators have less of an ability to adapt to changing market conditions. The benefits of restricting changes to registration applications and short notice applications should allow greater symmetry of information between operators and customers and reduce the threat of post entry anticompetitive behaviour. The social benefits of bus users using more stable bus services should be significant as a result of these policies. It is reasonable to expect a net social benefit from this policy.