

EXPLANATORY MEMORANDUM TO
THE BUS SERVICE OPERATORS GRANT (ENGLAND) (AMENDMENT)
REGULATIONS 2013

2013 No. 2100

1. This explanatory memorandum has been prepared by the Department for Transport (DfT) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1. This instrument provides, with effect from 1st October 2013, for changes to be made to Bus Service Operators Grant (BSOG) eligibility criteria.

2.2. From 1st October 2013, London franchised bus services will be ineligible to receive BSOG.

2.3. In addition, the following specific types of local bus service will no longer be eligible to receive BSOG:

- rail replacement services;
- temporary services intended to operate for less than six consecutive weeks;
- services for which the fare includes a special amenity element (this includes services to transport passengers between rail stations, airports or sea terminals and their dedicated car parks);
- services operated primarily for the purpose of tourism or because of the historical interest of the vehicle; and
- community transport services operated by local authorities using their own staff.

2.4. Government will also stop paying BSOG, from 1 January 2014, for services outside London that are tendered and not otherwise commercially viable.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1. None.

4. Legislative context

4.1. The Regulations amend the Bus Service Operators Grant (England) Regulations 2002 using powers contained in section 154(5) of the Transport Act 2000 and are subject to the negative resolution procedure.

5. Territorial Extent and Application

5.1. This instrument applies to England only.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background – what is being done and why

7.1. Bus Service Operators Grant (BSOG) - a grant made by the Secretary of State for Transport under powers contained in section 154 of the Transport Act 2000 - is the main bus subsidy funded by DfT. It is currently paid to bus operators at a rate of 34.57 pence per litre (ppl) of diesel on the fuel consumed in the operation of local bus services. The aims of supporting bus service providers via BSOG are to lower congestion, increase accessibility and reduce social exclusion. However, as BSOG is linked to fuel consumption bus operators receive more subsidy if they increase consumption; this suggests the subsidy is poorly linked to environmental objectives. We have reviewed BSOG to better target funding in line with DfT's objectives.

7.2. This Statutory Instrument, which amends BSOG eligibility criteria, forms part of a broader reform of BSOG that also includes the creation of several Better Bus Areas (BBAs). Under the reforms, BSOG will no longer be paid to the operators of local authority tendered bus services and London franchised bus services. Instead, Transport for London and the Greater London Authority will each receive half of an annual figure, broadly equivalent to the previous total amount of BSOG claimed annually by London franchised bus services. And, under Section 31 of the Local Government Act 2003, new grants (“section 31 Grants”) will be established to pay each local authority - in England and outside London - funding broadly equivalent to the amount of BSOG that was previously paid to operators of local authority tendered bus services within their boundaries.

7.3. Making funding available to local authorities that would previously have been paid to bus operators in the form of BSOG for London franchised services and tendered bus services will allow for spending decisions to be made at a local level. This should result in funds being more effectively targeted. It will also mean bus operators no longer receive a direct subsidy on fuel consumption for such tendered services, which should incentivise operators to improve fuel efficiency.

7.4. Further Section 31 Grants will be made to local authorities which are awarded Better Bus Area status. Within BBAs - which will last for 4 ½ years and then

be reviewed - the level of BSOG paid to operators for commercial services will be gradually reduced. At the same time the local authority will annually receive the equivalent of the BSOG forgone by operators plus an additional amount worth 20 percent of the value of BSOG within the defined BBA. These funds will be targeted at bus improvement measures.

7.5. By creating a limited number of BBAs via a competitive process, the Government will seek to incentivise local authorities and operators to work together to provide better services for passengers and deliver better environmental outcomes and value for money.

7.6. Making the specific bus services set out at para 2.3 ineligible to receive BSOG will - at a time of intense pressure on the public purse - help to focus BSOG funding on supporting the types of bus services for which the subsidy was first devised.

7.7. Taken as a whole, the reforms to bus subsidy seek to encourage greater growth in bus usage, which in turn will help achieve mode shift and lower congestion. Reducing carbon emissions from buses by increasing incentives on bus operators to invest in more fuel efficient buses is an additional objective.

7.8. There are no current plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1. The Department for Transport (DfT) ran a public consultation between 13 September and 12 November 2012 seeking views on how the reforms should be implemented. A total of 143 responses were received.

8.2. The primary purpose of the consultation was to gain insight into how best the reforms should be delivered. As a result, the DfT gained useful information in a number of relevant areas from contributions which came from across the industry, including the bus and coach industry, private individuals, local authorities, and representative groups. The Department has considered all responses and the analysis was used in reaching final conclusions.

9. Guidance

9.1. Operators and local authorities have been kept up to date on the progress of the reforms and their implications via regular mail-shots. Materials, such as BSOG claim forms and operator guidance, have been updated accordingly to take account of the changes.

10. Impact

- 10.1. The impact of the reforms on the public sector is expected to be limited as devolving funds in relation to both the tendered and franchised component of BSOG to local authorities represents a simple cash transfer between central and local government.
- 10.2. The impact on charities and voluntary bodies is likely to be negligible. Under sections 19 and 22 of the Transport Act 1985 organisations who operate in Great Britain without a view to profit can obtain a permit exempting them from the need to hold a PSV operator's licence when providing transport for a charge. See this link for a full description of those services:
<http://www.dft.gov.uk/vosa/repository/PSV%20385%2018%20November%2009.pdf>. Any Section 19 community transport services whose purpose is not to carry on business for gain, will remain eligible to claim for BSOG, unless they are operated in-house by local authorities. In the case of the latter, each local authority will receive a grant from the Government broadly equivalent to the amount of BSOG they claim for these services at present. Providers of non-tendered Section 22 community services, which often run to timetables and can charge a fare, will also retain eligibility to claim BSOG.
- 10.3. The exact impacts that the reforms will have on business are unknown at present as they will depend upon how individual local authorities use the devolved funding to support transport services in their area. Devolution to local authorities of BSOG funding, which is currently paid to bus operators for operating local tendered services, will apply to all operators, therefore it will apply to small, medium and large businesses. The rationale for devolving funding for tendered services is to allow local authorities to use the funding to look across their areas and identify local priorities for filling gaps in the network of commercial services run by bus operators. Whilst exact impacts are unknown, as we expect local authorities to take account of the BSOG foregone by operators when reviewing their tendered contracts or entering into new contracts, we envisage the overall impact here to be limited.
- 10.4. A full Impact Assessment can be found on the government website <https://www.gov.uk/government/publications/reforming-bus-subsidy-in-england-final-impact-assessment>.

11. Regulating small business

- 11.1. The legislation applies to small business. Its precise impact on small business is unknown but is likely to be limited, see para 10.3 and the link to the full Impact Assessment, which provides more detail on the likely impacts.

12. Monitoring and Review

- 12.1. The Government intends to carry out a further review of BSOG during 2014. In particular, this will look at those parts of the scheme which have yet to be reformed, such as payments for commercially viable bus services outside London, as well as looking at the current system under which BSOG is paid according to the amount of fuel used by individual bus operators. The outcome of this review may require further amendments to the Bus Service Operators Grant (England) Regulations 2002, as well as to the 2013 regulations which are the subject of this explanatory memorandum.
- 12.2. Given this, the Government believes that it would be unnecessary to include in the 2013 regulations a requirement to review them no later than five years after the day on which they come into force (ie October 2018), as this would be overtaken by the earlier review which the Government intends to carry out.
- 12.3. Equally, the Government does not believe that it would be appropriate for the regulations to include a sunset clause which provided that they ceased to have effect after a period of seven years. These regulations do not create an additional regulatory burden, but relate instead to Government spending decisions and how that spending should be distributed. In addition, they will be subject to the earlier review to be carried out during 2014, as set out in section 12.1 above. It would, therefore, be premature to include any sunset clause in the 2013 regulations.
- 12.4. The impact of the reforms will be monitored closely by officials within the Department for Transport using a range of sources. This includes evaluation and monitoring information which successful Better Bus Area authorities will be asked to submit.

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