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## Guidance to local authorities on eligibility for disabled people

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Published 31 May 2001, modified 22 November 2005 to reflect the change in statutory minimum entitlement

### Introduction: the Statutory Minimum Concession

1. The Transport Act 2000 ("the Act") provided for a statutory minimum 50% discount on local bus services for elderly and disabled people in England and Wales. The Travel Concessions (Extension of Entitlement) (England) Order 2005 improves this statutory minimum requirement in England to free off-peak local bus travel for elderly and disabled people <sup>1</sup>. Given the correlation between age and disability - two thirds of disabled people are elderly - many disabled people would qualify for concessionary travel on the grounds of age alone, but the Act provides for the same benefits to be given to them, irrespective of age.
2. The Act modified the two statutory regimes under which travel concessions are granted. The grant of concessions is governed outside Greater London by sections 93 to 102 of the Transport Act 1985 and within London by sections 240 to 244 of the Greater London Authority Act 1999.
3. **Outside Greater London.** The Act requires the operator of a bus service to provide the statutory minimum to any person holding a 'statutory travel concession permit' (section 145(1)). Local authorities which are 'travel concession authorities' <sup>2</sup> must issue a permit free of charge to any applicant who appears to that authority to be an 'elderly or disabled person' residing in its area (section 145(2)). An elderly person, for the purposes of the Act, is a person who has attained the age of 60 years <sup>3</sup>. Disabled people are defined by reference to seven categories (section 146 - see below).
4. **Greater London.** The Act (section 151) has the effect of requiring London local authorities to agree uniform arrangements with Transport for London under which travel concessions are extended to disabled people in the same seven categories, failing which the reserve free scheme will be triggered.
5. **Free Bus Passes:** The concessionary fares permit for the statutory minimum is to be free of charge. The Act does not require the applicant to be fully indemnified for the cost of providing his/her photograph - nor for any signed medical certification, or any postage on his/her application. However, if the machine that issues the permit takes a photograph of the applicant as an integral part of the process, then no charge can be made.

**6. Replacement Bus Passes:** Bus operators must grant the statutory minimum concession to eligible persons. The purpose of imposing on the authority a duty to issue permits is to provide evidence to bus operators of the permit holder's entitlement. There is no provision in the Act about safe keeping and it is the permit holder's responsibility to look after that evidence. However, it is likely that if a person applies for a replacement in good faith, the authority would be under a duty to issue one subject to the cost of producing it. Nothing in the Act would seem to prevent an authority from refusing to issue a replacement pass to a person who it believed was engaged in fraud.

## **Purpose of Guidance: determining disabled people's entitlement under the Act**

7. The Transport Act 1985 gives local authorities outside London power, at their discretion, to offer any level of concession they wish to disabled people in any or all of the categories defined in section 93(7) of that Act. That power has been modified by the Act to permit concessions to be given to people within any of the seven categories (these categories are broadly similar to those originally specified under the 1985 Act but there are some changes of detail). The statutory minimum does not extend to companions of pass-holders, but authorities remain free to offer them concessions under their discretionary powers under the 1985 Act.

8. The Greater London Authority Act 1999 originally empowered London local authorities to arrange with Transport for London for the grant of such concessions as they thought fit to pensioners, blind people and those with serious walking difficulties. That discretionary power has also been extended by the Act to enable concessions to be granted to disabled people in the seven categories.

9. This Guidance is not concerned with the exercise of those discretionary powers but with the determination of entitlement of disabled people to the statutory minimum. Under the terms of the Act, it is for a local authority to determine whether someone is a 'disabled person' for that purpose. But sections 145(4) and 151(5) also provide for the Secretary of State to issue to local authorities guidance to which they must have regard in reaching a decision. In doing so, the Secretary of State is obliged to consult with the Disabled Persons Transport Advisory Committee (DPTAC - the Government's statutory advisers on the mobility needs of disabled people) and with local authority interests.

10. This statutory guidance, which has been subject to the required consultation applies only to England <sup>4</sup>. Implementation of these provisions in Wales is a matter for the National Assembly for Wales.

## **General criteria to be taken into account in determining entitlement**

11. The Disability Discrimination Act 1995 (DDA) provides a definition of disability <sup>5</sup> which has received some judicial attention since it was passed. The seven categories of disabled person listed in the Transport Act 2000 do not cover the full range of disabled people included within that definition.

12. However, the Department is of the opinion that, in line with the central principle of the DDA definition, the types of disability which should enable people to claim the statutory minimum are those which are permanent or which have lasted at least 12 months, or which are likely to last at least 12 months

- and which have a substantial effect on a person's ability to carry out normal day-to-day activities.

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

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

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

16. Where local authority officers are unable to decide whether an applicant meets the criteria, it may be necessary to seek independent medical evidence to inform their decision. Some local authorities will, of course, have their own medical advisers on whom to call. Others should where possible look to other sources than the applicant's GP. Other health professionals - for example, occupational therapists - may be better placed to provide appropriate advice. Where it is necessary to use a GP, the contact should be made direct by the authority, having secured the applicant's agreement and the GP should only be asked for answers to factual questions. They should not be asked for an opinion on whether someone meets the criteria.

## **The Seven Eligible Categories - section 146 of the Act (outside Greater London) and section 151(4) of the Act (Greater London)**

The seven categories of disabled person include any person who:-

### **"(a) is blind or partially sighted"**

17. "Blind" means having a high degree of vision loss i.e. seeing much less than is normal or perhaps nothing at all.

18. Blind people can register with their local council. For this to happen, a consultant ophthalmologist (eye specialist) must have completed a form and submitted it to the blind person's local social services department. In general terms a person can be registered as blind if they cannot see (with glasses, if worn) the top letter of the eye test chart (used by doctors and opticians) at a distance of 3 metres or less.

19. Some people who can read the top letter of an eye test chart at 3 metres, but not at 6 metres, may still be eligible for registration as blind if their field is also severely restricted. Only being able to read the top letter at 3 metres is sometimes referred to as 3/60 vision: the person can see at 3 metres what a person with normal vision can see at 60 metres.

20. "Partial sight" is a less severe loss of vision. Partially sighted people can see more than someone who is blind, but less than a fully sighted person.

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

restricted, they may still qualify for registration.

22. The Department advises that permits should be issued to people whose sight is so impaired that they would be able to register as blind or partially sighted. For both blind and partially sighted people, however, registration is voluntary. It is recognised that local authorities are unlikely to have the expertise to assess applicants so, for the purposes of the travel concession local authorities may, where a person is not on the local authority blind and partially sighted register, require evidence that the applicant is registerable as blind or partially sighted from an eye specialist, for example, an optometrist.

### **"(b) is profoundly or severely deaf"**

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

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

25. As in the case of blind and partially sighted people, local authorities may, where appropriate, require applicants to show evidence of registration before issuing a permit, or evidence that they are registerable, for example, an audiological report, or a report from an aural specialist

### **"(c) is without speech"**

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

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

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

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

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

29. To simplify the assessment process, local authorities may wish to accept receipt of the following state benefits, which link eligibility to the ability to walk, as evidence of eligibility under this definition provided that the award of the benefit has been for at least 12 months:

- Higher rate mobility component of Disability Living Allowance (DLA) ;
- War pensioners mobility supplement.

Applicants claiming these benefits will be able to produce documentary evidence of their entitlement.

30. In assessing the eligibility of other applicants local authorities will wish to consider:

- whether the applicant cannot walk for distances up to 100m without stopping, severe discomfort or help from another person.
- whether a mobility aid is used - wheelchair, crutches, walking frame, stick, etc.

31. It is envisaged that permits will be issued to people who can only walk with excessive labour and at an extremely slow pace or with excessive pain. In other words, the degree of disability should not fall far short of that required to qualify for the higher rate mobility component of DLA.

32. Where the applicant is not in receipt of either of the benefits mentioned above, or the local authority chooses not to use that mechanism, the Department advises that the authority should normally seek medical evidence to support the claim that the applicant's walking ability is permanently and substantially impaired. As mentioned in paragraph 16 above, some authorities will have their own medical advisers, or independent medical advisers. Occupational therapists may also be able to provide the necessary assessment to support the claim.

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

33. This category includes upper limb double amputees and those with congenital absence of both upper limbs.

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

### **"(f) has a learning disability, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning"**

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

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

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

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

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

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

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

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

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

- (a) has not had an epileptic attack whilst awake for a year or more, or
- (b) has a history of attacks whilst asleep, and only whilst asleep, over the past three years or more,

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

41. Other groups not covered by the Regulations include:

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

experiences disabling hypoglycaemia they will be prevented from driving until their diabetes is controlled;

42. The above list is not comprehensive. Any person with a cardiac, locomotor, renal or neurological disorder might qualify (the latter including those suffering from pre-senile dementia). Where there is doubt about whether someone would be refused a driving licence then the local authority is strongly advised to seek independent medical advice.

<sup>1</sup> *The statutory minimum requirement in Wales was extended to give elderly and disabled people free bus travel by the Travel Concessions (Extension of Entitlement) (Wales) Order 2001.*

<sup>2</sup> *Defined in section 146 as any Passenger Transport Executive, non-metropolitan district council and, where there is no district council for an area, a county council.*

<sup>3</sup> *The definition in the Act was amended by the Travel Concessions (Eligibility) Act 2002.*

<sup>4</sup> *It has been modified on xx November 2005 to reflect the improvement in the statutory minimum requirement to free off-peak local bus travel. It does not amend the interpretation of the seven eligible categories.*

<sup>5</sup> *"A physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities": see section 1(1).*