

BUS SERVICES (NO. 2) BILL

Supplementary Delegated Powers Memorandum from the Department for Transport

A. INTRODUCTION

1. This memorandum has been prepared by the Department for Transport to assist with the scrutiny of the Bus Services (No. 2) Bill (“the Bill”).
2. This Memorandum describes powers in the Bill conferring power to make subordinate legislation and other delegated powers which were amended or added at the Report stage in the House of Lords (first House). This Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

B. DELEGATED POWERS

Local transport authority byelaws

Clause 25 – TfL byelaws

Power conferred on: Transport for London (“TfL”)

Power exercised by: Byelaw

Parliamentary procedure: N/A

Context and Purpose

3. This new clause will allow TfL to make byelaws relating to local bus services in London, specifically in relation to the matters set out in inserted new section 244A of the Greater London Authority Act 1999. The clause also provides for those byelaws, and TfL’s Road Transport Premises Byelaws, to be enforced by authorised persons, including by means of fixed penalty notices. TfL’s Road Transport Premises Byelaws are made under the existing powers in section 25 of the London Transport Act 1969.
4. TfL have specifically asked the Department to include London in the byelaws provisions in the Bill, insofar as they relate to bus services. Although TfL’s officers are able to deal with anti-social behaviour (“ASB”) at bus stops and bus stations under the existing Road Transport Premises Byelaws, TfL does not currently have power to make byelaws applying on buses.
5. Closing this loophole will bring TfL into line with other local transport authorities (“LTAs”) in England, who will have powers to make byelaws applying on local bus

services under the Bill as introduced. It will also help to make buses in London safer for passengers and for staff.

Justification for taking the power

6. The Department considers it is appropriate for ASB on local bus networks to be dealt with in byelaws made by the relevant LTA and, in London, by TfL. These kinds of local matters are commonly dealt with by way of local authority byelaws, including in section 235 of the Local Government Act 1972. As mentioned above, TfL also has existing powers under section 25 of the London Transport Act 1969 to make byelaws addressing ASB on its road transport premises.
7. The intent is for LTAs and TfL to make byelaws which are tailored to their local area and its specific needs, and to be able to enforce these byelaws on a local level. General laws on the face of the Bill would not provide the flexibility necessary to accommodate each LTA's and TfL's specific local requirements and policies regarding ASB.
8. The Department also considers that it is appropriate to allow LTAs and TfL to decide if individuals will be made subject to criminal penalties for breach of the byelaws or not, based on their local circumstances. The Bill sets out the maximum criminal penalty that can be made available for breach of the byelaws.

Justification for the procedure

9. The byelaws are not subject to any Parliamentary procedure. This is standard for local authority byelaws, which must ordinarily be confirmed by the Secretary of State before they can come into force: see e.g. section 236 of the Local Government Act 1972. TfL's Road Transport Premises Byelaws are also confirmed by the Secretary of State under section 67 of the Transport Act 1962: see section 25(4) of the London Transport Act 1969. In the Department's view, scrutiny by the Department and approval from the Secretary of State provides the appropriate degree of scrutiny.

Clause 25 – TfL byelaws

Power conferred on: Secretary of State

Power exercised by: Statutory Guidance

Parliamentary procedure: N/A

Context and Purpose

10. Inserted new sections 244B and 244C of the Greater London Authority Act 1999 confer various enforcement powers on "authorised persons" in relation to byelaws

TfL makes under inserted section 244A of that Act, and TfL's existing road transport premises byelaws. An "authorised person" is defined in section 244B(7) as a person authorised by TfL for the purposes of the section.

11. The enforcement powers in inserted sections 244B and 244C are in the same terms as the powers in relation to LTA byelaws included in the Bill at introduction (see new sections 144D and 144E of the Transport Act 2000). They include powers to require a name and address or leave a vehicle, and issue fixed penalty notices. The purpose of the various powers is to assist TfL in enforcing byelaws made under new section 244A, as well as its existing road premises byelaws.
12. In line with inserted new section 144D(4) of the Transport Act 2000, the delegated power in inserted section 244B(4) allows the Secretary of State to issue statutory guidance about the exercise of the enforcement functions under inserted sections 244B and 244C. TfL and authorised persons must have regard to guidance issued under section 244B(4).

Justification for taking the power

13. The delegated power in inserted section 244B(4) of the Greater London Authority Act 1999 will enable the Secretary of State to issue guidance about the appropriate and proportionate use of the enforcement powers in new sections 244B and 244C. Guidance issued under the power may, for instance, give examples of circumstances where it would be appropriate to issue a fixed penalty notice, or explain how authorised persons should approach using the enforcement powers in relation to young people. In the Department's view, these are detailed matters best suited to statutory guidance rather than primary or delegated legislation. Guidance will allow the Secretary of State to set out examples and broad principles to follow, rather than prescriptive legal rules. All the relevant legal limitations and requirements are set out on the face of the Bill.

Justification for the procedure

14. Given the likely nature and content of the statutory guidance, and in particular the fact that it will not define or create new mandatory legal responsibilities, the Department does not consider it is necessary for the guidance to be subject to any parliamentary procedure. The Secretary of State must publish any guidance issued, varied or revoked under section 244B(4) (section 244B(6)).