



Chartered
Institute of
Environmental
Health

Improving Bus Passenger Services through the Regulatory Framework

Response to consultation by Department of Transport

June 2010

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Any enquiries about this response should be directed in the first instance to:

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Introduction

The Chartered Institute of Environmental Health (CIEH) welcomes this opportunity to comment on the Department of Transport consultation on Improving Bus Passenger Services through the Regulatory Framework.

Our submission is primarily concerned with the need for compliance with the smokefree legislation. However, our members have also raised issues with us concerning the proposals to prohibit drinking of alcohol on buses and we have therefore included these in our submission.

We have constructed our response in three parts:

Part 1 provides background information on our concerns and activities relating to protection from second-hand smoke.

Part 2 contains our specific comments on the consultation proposals and our responses to the questions.

Part 3 contains examples from recent activities of local authority enforcement officers.

We have also appended a copy of Guidelines relating to the Management of Smoking on School Transport which was jointly produced by Newcastle City Council Childrens Services and the local Transport Providers. We highly recommend the partnership approach adopted in this example and we consider it a model approach for resolving problems.

Part 1

1. Background information on CIEH concerns and activities relating to protection from second-hand smoke
 - 1.1. The CIEH has campaigned for over 20 years for protection for workers from second-hand smoke. It is a founder member of the Smokefree Action Alliance; a signatory of the Asthma At Work Charter and the main endorser of the National Clean Air Award, administered by the Roy Castle Lung Cancer Foundation.
 - 1.2. We have had important roles in developing and implementing the smokefree legislation throughout the UK. This has included:-
 - representation at the Smokefree England Ministerial Reference Group
 - designing and delivering the National Smokefree Legislation Training Programme for England, funded by the Department of Health to provide training to some 2000 local authority officers
 - developing the standard national guidance for regulatory officers, published by Local Authorities Co-ordinators of Regulatory Services (LACORS).
 - 1.3. Responsibility for ensuring compliance with smokefree legislation in England and Wales, and throughout the UK and the Isles of Britain, lays with local authority environmental health officers. The CIEH continues to support its members and others involved in compliance and enforcement, by providing them with technical advice and practical guidance.
 - 1.4. Our Principal Policy Officer, who has prepared this response to your consultation, is an acknowledged expert on the application of smokefree legislation. He is an advisor to the Department of Health Tobacco Control National Support Team and a member of the advisory boards to the UK Centre for Tobacco Control Studies and ASH (England). He is a technical expert for Global Smokefree Partnerships and a consultant to the World Health Organisation and has advised many countries in Eastern Europe, the Far East and the Gulf States.

Part 2

2.0 Specific comments on the consultation proposals and our responses to questions

General comments

- 2.1 We note that this consultation arises from the need to update The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990, as amended (The Conduct Regulations). The DfT has identified the need for this updating specifically to take into account the requirements of the Health Act 2006 and the regulations made under it, which introduced the prohibition on smoking in enclosed workplaces and public places including public transport.
- 2.2 At the same time, the DfT are seeking views on the ways of addressing issues regarding the behaviour of passengers and staff. These issues include:-
- Concerns of older and/or disabled passengers about drivers accelerating quickly away from bus stops, without giving them time to sit down.
 - Wheelchair space being occupied by prams or pushchairs thereby depriving wheelchair users' access to the bus.
 - Smoking, consumption of alcohol and drunkenness on the bus.
- 2.3 Unfortunately, the CIEH did not become aware of this consultation until very late and therefore it has not been possible for us to carry out our usual member consultation, nor to give all of these matters details consideration. However, we do have a fundamental concern for health improvement and environmental protection and to that end we support any measures which enhance or improve people's experience of public transport and increase its use. In that respect the CIEH policy officers share the concerns that have been identified. Anecdotally, we have all experienced passengers losing their balance and even falling when buses pull away whilst people are still finding their seats. We also believe that drinking and drunkenness on buses, particularly late in the evening and at night, are common occurrences and can pose real risks to passenger safety and passenger's feelings of safety.
- 2.3 In our response to this consultation, we have therefore concentrated on the issues relating to smoking on buses and the manner in which the smokefree legislation needs to be taken into account as this is an area in which we and our members have both expertise and extensive experience.
- 2.4 We are also providing our advice on the management of operators and measures to support increased compliance generally.

Sanctions against repeated breach of Conduct Regulations

- 2.5 The consultation document states that DfT have identified that there is concern amongst the public and other stakeholders about how driver and passenger conduct is regulated and how these regulations are interpreted and enforced.
- 2.6 It is to be expected that failure to implement the requirements of the Conduct Regulations effectively leads to inconsistency and can bring the law into disrepute. The same will be true of the operators' Conditions of Carriage. It is our experience

that the provision of comprehensive guidance can help to ensure that all parties have a clear understanding of the requirements and how they are to be applied. This has certainly been our experience in developing the LACORS Guidance for Council Regulatory Officers on implementation of the smokefree legislation in England, which is already in its second edition and is very comprehensive. Such guidance can readily be developed into training, or incorporated into existing training, including induction training.

- 2.7 We also recommend that bus operators should be required to produce their own compliance policies to document the arrangements that they will put in place and implement to ensure compliance, including enforcement measures, and specifying the roles and responsibilities of various personnel and their expectations of the police and other enforcement agencies. Comparison of compliance policies which include both the Conduct Regulations and the Conditions of Carriage can then help to demonstrate consistency and fairness.
- 2.8 The content and purpose of the Conduct Regulations, as well as bus operators' compliance policies and their operators' Conditions of Carriage, should be made readily available to bus users and the public.

Question 12: Do you agree with proposals to impose less than criminal sanctions (such as penalty fines) against operators who repeatedly violate the Conduct Regulations? Please give reasons for your views.

Question 13: Are there any other considerations that should be taken into account in determining appropriate and effective sanctions against repeated breach of Conduct Regulations? Please give reasons for your views.

- 2.9 It is the view of the CIEH that imposing penalty fines, in the form of 'fixed penalty notices' can be successful and avoid the need for legal proceedings and the costs involved. It is important that fixed penalty notice procedures operate in a fair and equitable manner. An appeal provision should be incorporated and, if not, then an impartial adjudicator should resolve cases of dispute.
- 2.10 However, fixed penalties are really only appropriate for minor straightforward infringements where repetition or serious consequences are not envisaged. Therefore, the option of instituting legal proceedings should still be available for cases of persistent non-compliance and serious offences.
- 2.11 There would appear to be several levels of sanction that can be applied in respect of a breach of the Conduct Regulations.
- 2.11.1 Firstly, an individual can incur the disciplinary penalties as provided for in their employer's personnel management policies.
- 2.11.2 Secondly, legal proceedings can be instituted against the individual either, for acts committed by him/her, or for failure to ensure compliance by others.
- 2.11.3 Thirdly, the operators themselves, or the legally liable representatives of their trading company, can be subject to legal proceedings.

2.11.4 Fourthly, for serious and persistent failure in compliance, action could be taken to restrict, suspend or cancel the operator's public service vehicle licence.

- 2.12 The proposal by DfT to consider the introduction of financial sanctions against operators will provide an additional sanction which may avoid the need for legal proceedings.

Consumption of alcohol on buses

Question 14: Do you have any general views on the consumption of alcohol on buses? Please give reasons for your views.

Question 15: Do you agree with proposals to amend The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990; to introduce a ban on the consumption of alcohol and carriage of open containers of alcohol on buses, in England and Wales? Please give reasons for your views.

Question 16: Are there any other considerations that should be taken into account in introducing such a ban? Please give reasons for your views.

- 2.13 The CIEH would be willing, in principle, to support a prohibition on the consumption of alcohol and carriage of open containers on buses, however, we would want to see detailed proposals on how the prohibition would be applied and enforced. We would particularly be interested in the views and support of the Home Office and the police.

- 2.14 A similar prohibition has recently been introduced on all London underground trains, however, there has been little publicity and hardly any signage and, as a result, people are both unlikely to comply and unwilling to challenge people seen to be contravening the prohibition. A particular concern would be where buses were in use for 'excursions' to sporting events etc, or for private hire where drinking is part of the intended, or traditional, activity.

Changes to the definition of Regulated Public Service Vehicles to include European approved vehicles

Question 17: Do you agree that proposed changes to the definition of 'regulated public service vehicle' in the Conduct Regulations, to include other European approved vehicles, is a step in the right direction? If not, please state why and provide all the necessary supporting evidence.

- 2.15 The CIEH supports the proposal to change the definition of 'regulated public service vehicle' to include other European approved vehicles. We note that the advantage of this approach, rather than relying on Part 3 of the Disability Discrimination Act 1995, is that the Conduct Regulations impose specific duties on drivers, conductors and inspectors, with respect to disabled people rather than the general duties imposed by the DDA.

Smoking on buses

Question 18: Do you have any comments regarding updating the Conduct Regulations in line with the smoking ban in Part 1 of the Health Act 2006? Please give reasons for your views.

- 2.16 We would respectfully point out that in all 'official' communications the use of the expression 'smoking ban' has not been used because it is considered to be a negative expression and an incorrect description of the restrictions and prohibitions on where and when people can smoke, the purpose of which has been to create the positive outcome of smokefree environments to protect people's health.
- 2.17 The actual requirement in relation to vehicles is that any vehicle which is enclosed, and any enclosed part of a vehicle, is required to be smokefree if it is used by members of the public or a section of the public, whether or not for reward or hire. The basis of determining whether a vehicle, or a part of a vehicle, are enclosed is set out in The Smoke-free (Exemptions and Vehicles) Regulations 2007. This definition brings virtually all buses and coaches within the smokefree requirements, whether they are in normal use or for private hire. Only those that have open tops, as in the case of some vintage and tour buses, would be able to permit smoking in the open areas, provided that any rain canopies or awnings are completely stowed away at all times when smoking is being permitted. It is also a requirement of the smokefree legislation that a vehicle which is required to be smokefree must be maintained at all times, even when not in use, for example, for maintenance and under repair.
- 2.18 The smokefree legislation requirements are not simply measures to impose penalties on people who smoke in contravention of the law, they also impose actions on people to prevent smoking in breach of the law from taking place and to take action to stop it when it does occur.
- 2.19 The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 specify the persons who are under the duty of causing any person who is smoking in a smokefree vehicle to stop smoking. These are:-
- the driver;
 - any person with management responsibilities for the vehicle, and;
 - any person on a vehicle who is responsible for order or safety on it.
- 2.20 The view of the CIEH is that this requirement applies both to individual incidents where people are found to be smoking and need to be told to stop and also to the situation where smoking is known to be occurring on a regular basis on a particular vehicle, or route, or parking place etc. In such circumstances, the expectation of the local authority; as the enforcement agent, would include proactive measures being taken by the persons with the management responsibilities to detect, prohibit and prevent occurrences of smoking. In these situations the expectation would be that the persons with the management responsibilities would take all reasonable steps to secure continued compliance. The CIEH would be willing to work with the DfT to assist in identifying the range of measures that might be considered in such circumstances and which might usefully be promoted in any guidance to accompany the amended Conduct Regulations.

- 2.21 In Section 3 below, we have provided particular examples from recent activities of local authority enforcement officers which illustrate the difficulties which can be encountered in dealing with serious and persistent offenders. These examples are not in any way exceptional and similar situations are encountered in a variety of areas and situations.
- 2.22 There are two particular areas where the DfT might consider making specific recommendations.
- 2.22.1 Additional Signage – The Smoke-free (Signs) Regulations 2007 (Regulation 3) require that any person with management responsibilities for a smokefree vehicle must ensure that at least one no-smoking sign is displayed in a prominent position in each compartment of the vehicle. This is of course a minimum requirement and large passenger carrying vehicles with several entrances and exits could be recommended to display additional signs. In passenger carrying vehicles where smoking offences are known, or reported to be occurring, then as well as additional signs, measures such as illuminated notices and audible warnings, as well as smoke detectors and alarms, can be employed.
- 2.22.2 Reporting of Offences – Many bus inspectors will be familiar with procedures for obtaining and recording evidence. Arrangements could be made with local authorities, as the enforcement agencies, to issue fixed penalty notices on the basis of the evidence provided by bus inspectors. Furthermore, there is no reason why a local authority should not authorise local bus inspectors to enforce the smokefree legislation in its area on the vehicles for which the bus inspectors are responsible.

General

Question 19: What other amendments to secondary legislation do you think might facilitate improvements to bus services? Please state why and provide all the necessary supporting evidence.

- 2.23 The CIEH recommends that the Conduct Regulations themselves, or their accompanying guidance, should include procedures for reporting, recording and investigating complaints, including informing complainants of the action taken. Compliant investigation should be an open and transparent process in order to encourage confidence in the public that compliance is taken seriously.
- 2.24 The public needs to be informed and enabled to recognise that a vehicle is one which is subject to the requirements for Public Service Vehicles and that the drivers and other employees are subject to the Conduct Regulations and that contraventions can be reported.
- 2.25 Drivers and any other employees should be readily identifiable to members of the public by means of a name badge or employee number and it should be a serious breach of the Conduct Regulations to fail to identify themselves upon request.

Part 3

3. Examples from recent activities of local authority enforcement officers

- 3.1 These examples are being provided as verbatim text and have only been altered in order to prevent identification of the individuals and organisations involved.

Buses

- 3.2 "We have just finished a long running investigation into complaints of a bus driver smoking on the bus whilst waiting at the bus terminus. The original complainant had initially complained to the bus operator but the smoking continued and he complained to us. For the local authority to witness this offence means staking out the terminus waiting to see something and, as most of the drivers are law abiding, this took several visits to achieve. I finally observed a driver arrive at the terminus and light up without leaving his seat. It was raining at the time. I boarded the bus to have words and was asked "You don't expect me to stand outside in this, do you?" I told him that was exactly what I did expect and he stretched his hand out of the window and dropped the cigarette out. He refused to give his name or address but I assumed that if I got the registration details of the bus, I could get this information from the bus operator.
- 3.3 This was not that simple. An e-mail followed by a reminder drew a blank. A personal visit to the operator's office revealed that the operations manager had now resigned and I needed to come back at another time to see the regional director. This I did, only to be fobbed off with the former operations manager, who explained that he had resigned because he was fed up with having to cope with all the problems caused by the higher management. He said the regional director himself was a smoker and had already been reprimanded for smoking in his own office – so he was not very keen to get involved with this case. I requested the name and address of the driver concerned and was initially given the usual refusal 'due to the Data Protection Act', but when I explained that if I did not get this information, I would have to take action against the company, it was a different matter. Even then, I had to show him chapter and verse from the Health Act and the regulations before he eventually went to get the driver's file. From this, it was obvious that this driver had 'previous' for smoking and various other offences. We had a discussion about the company's internal disciplinary procedures which seemed well documented but not so well applied in practice.
- 3.4 A fixed penalty notice was served on the driver and a copy sent to the company so they could initiate internal disciplinary procedures (which they promised they would do – but I have no idea whether or not they actually have). Subsequent complaints were received from a different part of town but this was in the vicinity of the other terminus of this driver's route so I suspect the complaints probably related to the same driver. I did not stake out that terminus. The driver paid the fine early so got the discount.

Overall conclusion: hours of time, effort and mileage for a £30 fine? Any action which will make it easier for someone else to take the appropriate disciplinary action must be worthwhile."

School buses

- 3.5 "This is an area of particular interest for me as I am presently engaged in some work relating to schoolchildren smoking on school buses in (name of county omitted). Hence, please see my observations/comments below as per your request.
- 3.6 From my experience smoking on buses was originally a problem exacerbated by the fact that many bus drivers themselves were smokers and found it difficult to give up. However, with much effort and encouragement from environmental health practitioners and others the problem was gradually addressed. My approach here was to inform them of the law and put them in touch with local stop smoking services to help should they wish to give up. At the same time bus company owners were contacted and reminded that if their staff smoked in work vehicles and they were aware of the fact that they employed staff who did so, then in addition to the individual receiving a fixed penalty fine, the employer may be liable for the larger fine and prosecution. This approach also helped to focus minds.
- 3.7 As time has progressed the problem here has changed. Recently I undertook some research and identified that whilst bus drivers had stopped smoking on buses, their passengers, mainly schoolchildren, had not. This put the drivers in a difficult position as they felt they might then be accused of 'knowingly allowing' people to smoke on the bus and therefore be liable for the larger fine and prosecution. At present my research is ongoing, but there are at least six schools identified as having schoolchildren who try and smoke on buses. I am working with the smokefree county co-ordinator on this issue and hope to ensure that bus companies are supported in their attempts to deal with the smoking. Sadly at present neither the schools involved nor the county council who are responsible for school transport seem to be taking the issue seriously. My work continues.
- 3.8 With regard to the drivers, they feel powerless and unsupported to deal with this problem. Schoolchildren know not to smoke, but do so anyway. They mainly do this on double decker buses where the view of the driver can be obstructed. Other children report bullying and being made to stand in certain areas to block the view or path of the driver to those smoking. Drivers feel it is unreasonable to ask them to police a bus of up to 107 schoolchildren plus concentrate on driving a large commercial vehicle on difficult roads at peak times. Even if they can spot the offence of smoking, by the time they have brought the bus to a controlled stop, secured the money, left their seat and made their way upstairs the child has stopped smoking and the evidence has been destroyed. Drivers have no power to reprimand or eject a child so they then return downstairs to continue the journey. They may report the incident to supervisors, but nothing gets done as schools do not accept that the children smoke and the county council does not seem to take action either. As such many drivers state that they no longer report such 'minor indiscretions', instead preferring to concentrate on keeping their eyes on the road!
- 3.9 My recommendations are about to be presented to the interested parties and an action plan to tackle this devised. If you want to see the report I produced I would be happy to share it with you."