



House of Commons
Regulatory Reform Committee

**Proposal for the
Regulatory Reform
(Public Service
Vehicles) Order 2006**

Second Report of Session 2005–06



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*Report, together with formal minutes and
written evidence*

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The Regulatory Reform Committee

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Contents

Report	<i>Page</i>
Summary	3
1 Report under Standing Order No 141	5
2 Introduction	5
3 Extent of the proposal's application	6
4 Assessment of the proposal against the Standing Order No. 141(6) criteria	7
Inappropriate use of delegated legislation	7
Drafting issues	7
Removal or reduction of burdens	8
The maintenance of necessary protection	10
Estimates of costs and benefits	16
Adequate consultation	16
5 Conclusion	18
Formal minutes	19
List of written evidence	20

Reports from the Regulatory Reform Committee in the previous and present Session

inside back cover

Summary

The purpose of the proposed Order is to amend the Transport Acts 1968 and 1985 in order to remove or reduce four distinct burdens on bus service providers in England and Wales.

The proposed Order would:

- remove the requirement for school transport services carrying pupils or students (but not the general public) as fare-paying passengers to be registered with the traffic commissioners (“school transport”);
- extend the permitted length of bus subsidy contracts entered into by local authorities in England and Wales from five years to eight years where those contracts have been subject to competitive tender (“bus subsidy contracts”);
- allow Public Transport Executives (PTEs) to lease buses to operators for the provision of services under bus subsidy contracts (“leasing of buses by PTEs”)
- remove the restrictions placed by the Transport Act 1985 on councillor directors of Public Transport Companies PTCs which require them to apply for a dispensation from the Secretary of State or the National Assembly for Wales in order to speak and vote in council on, and participate in, executive functions relating to matters concerning the company (“PTC councillor dispensations”).

The Committee considers that a draft Order amended as described at paragraph 32 of this Report should be laid before the House.

1 Report under Standing Order No 141

1. The Regulatory Reform Committee has examined the proposal for the Regulatory Reform (Public Service Vehicles) Order 2006 in accordance with Standing Order No. 141. We recommend unanimously that a draft Order amended as described at paragraph 32 of this Report should be laid before the House.

2 Introduction

2. The proposal for the draft Regulatory Reform (Public Service Vehicles Order) 2006 was laid before the House by the Secretary of State for Transport on 21 November 2005.

3. The purpose of the proposed Order is to amend the Transport Act 1985 (“the 1985 Act”) and the Transport Act 1968 (“the 1968 Act”) in order to remove burdens associated with four specific aspects of the legislation governing bus services. The Department for Transport (“The Department”) considers that, since arrangements for bus subsidy contracts in the 1985 Act have been in place for nearly 20 years, there is a need for them to be brought up to date so that they can better reflect the important role of local bus services in current transport policy. The Department considers that the school transport proposal is required in order to clarify an existing confusion in registration requirements which has led in some cases to the withdrawal of transport services from pupils not entitled to free transport.

4. Prior to 1986, most local bus services were provided by three types of public sector undertakings: subsidiaries of the National Bus Company (NBC), Passenger Transport Executives (PTEs) and municipal or district council undertakings. Under the 1985 Act, NBC subsidiaries were sold off and the NBC disbanded, PTEs were reorganised and their bus undertakings converted to arms-length companies and sold off, and municipals were converted into Public Transport Companies (PTCs) and sold off, except for 13 in England and three in Wales. The 1985 Act also contained significant regulatory provisions governing local bus services operations. The 1985 Act replaced the Traffic Commissioners’ licensing of bus services outside London with a deregulated regime. The Department estimates that some 83% of local bus services outside London are currently provided on a commercial basis.

5. Holders of operators’ licences are required to register details of their services with the traffic commissioner who, in order to protect the public from unreliable services, has powers to penalise operators who fail to comply with the terms of their registration. The registration scheme also helps local authorities to identify which services in their areas are commercially provided so that they will be able to arrange for the provision of any remaining services they consider necessary. Local authorities procure these additional services by entering into contracts with bus operators, which are put out to competitive tender with a statutory limit to the duration of contracts of five years. In London, where the bus network is regulated by Transport for London (TfL), the registration system and competitive tendering rules do not apply in the same way.

6. The 1985 Act prevents PTC directors who are also members of the council that controls the company from speaking or voting in the council on any matters relating to the PTC. At the time that the 1985 Act was passed, the conduct of members of local authorities was subject to provisions set out in the Local Government Act 1972, but in the case of PTC councillor directors, restrictions were instead applied by the 1985 Act. Under the 1985 Act, the Secretary of State (or, as amended, the National Assembly for Wales) could grant a dispensation from the restrictions that could be used, for example, where the restrictions appeared to be against the interests of local inhabitants. The Local Government Act 1972 has been repealed, and the Local Government Act 2000 introduced a new ethical framework for the functions and procedures of local government based on recommendations from the Committee on Standards in Public Life.¹ The framework includes: a requirement for each local authority to prepare and agree a binding Code of Conduct for its members; Model Codes, made by the Secretary of State and the National Assembly for Wales, which can provide a mandatory minimum standard; and individual codes, made by each authority in England and Wales under the Act, to apply to PTC councillor directors in the same way as any other councillors who have been appointed to other bodies by their authority as its representative. However, PTC councillor directors are still also subject to the specific restrictions set out in the 1985 Act, which means that they are required to comply with two separate regimes regulating when they may participate in the business of the council.

7. The House has instructed us to examine the proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether the Government should proceed, whether amendments should be made, or whether the Order should not be made.

8. Our discussion of matters arising from our examination is set out below. Where a criterion specified in Standing Order No. 141 (6) is not discussed in the report, this indicates that we have had no concerns to raise about that criterion. During our examination, we requested further information from the Department about a number of issues relating to the proposal and the text of our questions is reproduced in Annex A to this report. The Department's response is reproduced as Appendix B. Additional supplementary responses are reproduced as Appendices C and D.

3 Extent of the proposal's application

9. The proposed Order extends to England and Wales. The primary legislation affected by these proposals does not extend to Northern Ireland. While the provisions in the primary legislation extend to Scotland, they are within the legal competence of the Scottish Parliament.

10. The school transport provision will affect local education authorities in England and Wales, the Vehicle and Operator Services Agency and bus operators. Services within London are not affected, although there may be some minor impact on London local education authorities that run services across the London boundary.

¹ *Standards of Conduct in Local Government*, Cm 3702-1, July 1997. Available at: www.archive.official-documents.co.uk/document/cm37/3702/770202.pdf

11. The bus subsidy contract provision will affect county, unitary and district councils (in England), county and county borough councils (in Wales), passenger transport authorities, Passenger Transport Executives (PTEs), local education authorities (outside London) and bus operators. It will also affect Transport for London with regard to any cooperative agreements with councils outside London.

12. The restriction on leasing of buses by PTEs is relevant only to England since there are no PTEs in Wales. The proposed changes will affect PTEs and bus operators. The Department states that they may also have an indirectly beneficial impact on metropolitan district councils (as local education authorities).

13. The provision relating to dispensations for Public Transport Companies (PTC) councillor directors will affect councils in England and Wales that control public transport companies, the councillors concerned, the Department and the Welsh Assembly Government.

4 Assessment of the proposal against the Standing Order No. 141(6) criteria

Inappropriate use of delegated legislation

14. **The proposal appears to be appropriate for delegated legislation.**

Drafting issues

15. Article 3(3) of the draft Order would insert a new paragraph (viiid) in section 10(1) of the Transport Act 1968. This would allow PTEs to lease buses to operators for the provision of services under bus subsidy contracts. There already exists a paragraph (viii), which on its face allows PTEs to lease buses generally. That provision no longer applies to any of the PTEs in Great Britain by virtue of a series of orders made in 1986 under section 60(5) of the Transport Act 1985. It would have been possible, when those Orders were made, to repeal paragraph (viii) using a power in section 60(7), but this was not done.

16. Section 10(1) as amended by the proposed Order would therefore contain both a general power to lease and a new, similar but more limited power. The general power would continue to have no effect. We asked the Department to explain why it had not taken the opportunity to repeal section 10(1)(viii) of the Transport Act by an incidental or consequential provision in the Order. The Department initially stated that it appeared still be possible to use the power in section 60(7) of the 1985 Act to repeal all the spent provisions by Statutory Instrument, but now accepts that it cannot now be used.

17. We consider that there would be some merit in using the Order to repeal paragraph (viii), as the apparent inconsistency between that provision and the new paragraph (viiid) would then be removed. The repeal would have no legal effect, however, as paragraph (viii) is spent. Also, the paragraph would continue to appear on the face of section 60 as it applies to Scotland. **We would therefore be content if the repeal were made but would not object if it were not.**

Removal or reduction of burdens

18. The general purpose of the proposed Order is to remove burdens associated with four specific aspects of the legislation governing bus services. The Department described in its Statement how it believed the proposed Order would remove burdens in the existing legislation. Our comments on its reasoning and our own analysis is given below.

19. **School transport.** Local Education Authorities (LEAs) may provide school transport and are required under the Education Act 1996 to provide it free to those with entitlement. The Public Passenger Vehicles Act 1981 allows LEAs also to carry fare paying passengers on vehicles providing free school transport. A part of the definition of “local service” as defined in the 1985 Act is that passengers are carried at separate fares. This means that a service provided exclusively for school transport meets the conditions which require it to be registered with the traffic commissioners if some of the pupils carried are charged a fare, even though the service is not available to the general public. This imposes duties on the LEA which are primarily intended to protect the interests of the general travelling public and are not necessarily appropriate for school transport. For example, a fee of £45 is charged for registration (and is payable on each variation to that registration) and the service provider must specify a route and timetable and provide advance notice of 56 days of any variations or cancellations to the registration. The Department states in its consultation document that this requirement to register school transport has not always been well observed but that there is an increasing awareness of the requirement. This has resulted in some LEAs choosing to confine the use of school services to those entitled to free transport so as to avoid the burdens placed on them otherwise by the registration requirements. The Department states that this has sometimes led to siblings of entitled children being unable to accompany them on these buses.

20. Under the proposal, the burden of registration would be removed from LEAs by article 2. This would insert provision into section 6 of the 1985 Act to except from the requirement to register any local service provided in pursuance of the Education Act 1996, and for the purpose of carrying i) pupils to or from premises where education is provided; ii) persons who escort or supervise pupils on the bus; and iii) any persons involved in the provision of education at those premises. Only those school services which also carry members of the public (ie persons other than those specified in the amending provision) would still need to be registered. **We therefore agree with the Department that the effect of this proposal would be to remove a burden.**

21. **Bus subsidy contracts.** Under the 1985 Act, a local authority may subsidise bus services where needs are not met by commercial services. The Department advised that this is currently the case in respect of some 17% of services outside London.² Sections 89 and 90(1) of the 1985 Act require that all bus subsidy contracts are subject to competitive tendering and a maximum duration of five years. Article 2 of the proposed Order would increase the existing statutory limit for bus subsidy contracts from five years to eight years. The proposed increase to eight years would be a relaxation of an existing restriction. **We therefore consider that the effect of this proposal would be to reduce a burden.**

² Consultation document on the proposal, paragraph 2.3.1

22. Leasing of buses by PTEs. Under the Transport Act 1985 local transport authorities are required when carrying out relevant transport functions to have regard to the transport needs of the disabled. The Department states that specifying these standards can reduce the number of tenderers and raise subsidy costs; small operators are often unwilling to invest in new vehicles to run a relatively short-term contract which may not be renewed. The Department notes that a method by which this difficulty can be addressed is for authorities to purchase vehicles which they can offer to lease out to the successful tenderer for the duration of the contract. This option is currently available to some local authorities (including non-metropolitan district councils and county councils) but not to PTEs, since one of the effects of the redefinition of PTE roles in the 1985 Act was to remove the power of PTEs to let vehicles out for hire. The Department now considers that the powers of PTEs would usefully be enhanced by the restoration of a power to let vehicles for hire in the context of bus subsidy contracts, in order to put PTEs on a par with other local authority providers of subsidised bus services. Article 3 of the proposed Order would insert new provision into section 10(1) of the Transport Act 1968 to create a new power for PTEs to lease vehicles to operators of subsidised contracts. This would remove the implicit restriction on the PTE's powers. **We therefore consider that the effect of this proposal would be to remove a burden.**

23. Leasing of buses by PTEs. Under the Transport Act 1985 local transport authorities are required when carrying out relevant transport functions to have regard to the transport needs of the disabled. The Department states that specifying these standards can reduce the number of tenderers and raise subsidy costs; small operators are often unwilling to invest in new vehicles to run a relatively short-term contract which may not be renewed. The Department notes that a method by which this difficulty can be addressed is for authorities to purchase vehicles which they can offer to lease out to the successful tenderer for the duration of the contract. This option is currently available to some local authorities (including non-metropolitan district councils and county councils) but not to PTEs, since one of the effects of the redefinition of PTE roles in the 1985 Act was to remove the power of PTEs to let vehicles out for hire. The Department now considers that the powers of PTEs would usefully be enhanced by the restoration of a power to let vehicles for hire in the context of bus subsidy contracts, in order to put PTEs on a par with other local authority providers of subsidised bus services. Article 3 of the proposed Order would insert new provision into section 10(1) of the Transport Act 1968 to create a new power for PTEs to lease vehicles to operators of subsidised contracts. This would remove the implicit restriction on the PTE's powers. **We therefore consider that the effect of this proposal would be to remove a burden.**

24. PTC councillor dispensations. Councillors who are directors of PTCs are disqualified under sections 74(3) and 74(3A) of the 1985 Act from taking part in Council debates or votes on any matter relating to the PTC's activities. The Department states that this provision was made to ensure that PTCs were kept at arms length and to make it difficult for them to collude in specific decisions such as those relating to the award of tenders or the granting of finance. The Department also states that the restriction is very wide, and, as well as preventing councillor directors from participating in detailed decisions, it prevents them from contributing to broader strategic debate relating to the development of the Council's transport policies. However, we also note that s.74(3A) of the 1985 Act does not prohibit a director from taking part in a discussion or voting on a local transport plan or

bus strategy. The Department's view is that the new framework for the conduct of members of local authorities provided by the Local Government Act 2000 Model Codes provides sufficient protection against the exercise of improper influences and that there is therefore no reason to maintain both the existing separate and concurrent regulatory provisions. Article 2(3) of the proposed Order would repeal sections 74 (3) to (12) of the 1985 Act so that PTC councillor directors would need in future to comply with only their own authority's Code of Conduct in relation to discussions of transport matters. **We consider that the effect of this proposal would be to remove a burden.**

The maintenance of necessary protection

25. **School transport.** The Department's view is that bus registration is a necessary protection for the general travelling public in order to ensure the provision of a satisfactory service. However, it considers this form of consumer protection unnecessary in the case of contracted school transport where there is no service provided to the general public and where the users of the service do not rely on publicly available information in order to make use of the services. The Department's view is that, as the service is provided for a specific group of people, those people will be directly informed of changes to the service. The Department also believes that LEAs need the flexibility to vary the services in response to changing demands from parents or pupils and changes to the school timetable and extra-curricular activities and that the registration provision is an unnecessary burden in this context. Any service which also carries members of the general travelling public is excluded from the effect of the proposal and remains subject to the existing registration requirement. The Department confirmed that it would remain within the discretion of the LEA to allow an "occasional carer" to be regarded as a supervisor or escort and to travel free on school transport services.³

26. We asked the Department whether the making of such a provision might have an unintended consequence in respect of the willingness of authorities to provide limited or occasional fare paying places for the public on buses otherwise provided wholly for the purpose of school transport. The Department's response was that because services which exclude the general public are ineligible for Bus Services Operator Grant, this would act as a more than sufficient counterbalance to any incentive to exclude the public for the purpose of avoiding the registration requirement⁴. **We agree.**

27. The Department recognizes that the purpose of the registration requirement is to oblige commercial operators to give notice of changes to their service provision and to commit them to running a service as registered. The Department suggests in its statement that the LEA will be able to enforce standards of reliability and punctuality itself via the contract with the service provider and that registration with the traffic commissioner is not necessary to maintain the required standard of service. Our concern was to ensure that the protection provided via contract enforcement would be sufficient, so we sought further explanation from the Department on this point. The Department responded that "irrespective of whether the services are registered or not, LEAs are in a position to enforce standards of service through appropriate conditions in the contract and, where

³ Appendix B, Answer 13

⁴ Appendix B, Answer 13

appropriate, to claim damages for failure to fulfil these obligations or in extreme cases to terminate the contract.”⁵ The Department also reasoned that parents or pupils affected by the poor performance of a school service are more likely to complain to the school or the LEA than to the Traffic Commissioners or the Vehicle and Operator Standards Agency. **We are satisfied therefore that no necessary protection would be lost.**

28. **Bus subsidy contracts.** The protection provided by the current five-year tender limit is that the market is tested regularly by putting contracts out to tender so that authorities obtain the best price for local bus services. The Department’s view is that the proposal to increase the limit to eight years would maintain this necessary protection and that there would merely be a longer maximum period between each market testing. The Department states that local authorities will be able to choose the appropriate length of contract to secure best value, that they will still be subject to control capable of ensuring compatibility with the competition test in Schedule 10 to the Transport Act 2000, and so most tender periods will continue in practice to be less than eight years. This Act, in outline, gives the Office of Fair Trading (OFT) jurisdiction to consider (and investigate) whether a tender has or is likely to have an unjustified significantly adverse effect on competition, and empowers the OFT if necessary to give directions as a consequence.

29. In its consultation response, OFT expresses concerns about contracts let for an unnecessarily long period and states that contracts in excess of five years are undesirable unless the local authority can show clear evidence that such contracts are necessary. It also states that where the PTE intends to lease a bus to an operator, it would expect the duration of the bus contract to be no more than five years, since the operator would not be required to undertake investment in purchasing new buses. Where the contract did not involve the lease of vehicles, OFT suggests that the local authority would need to justify the grant of a tender for more than five years and show that there are clear benefits to outweigh the restrictive market effects of the longer contract. At present, local authorities may not award contracts for longer than five years. Under the proposal, they would be able to do so if they believed that it was necessary and that it complied with the competition test in the Local Government Act 2000. However, the merit of the local authority’s arguments would be examined by the OFT only if a local service operator made an application to the OFT, the local authority itself made such an application or if the OFT chose of its own initiative to mount an investigation.

30. We therefore asked the Department to explain whether it had given any consideration to making provision to ensure that competition would not be restricted without compelling reasons, for example by requiring that where an authority offered a contract for more than five years it should have a duty to publish its reasons for doing so, thus bringing the matter to the attention of the OFT. The Department’s response was that, in its view, sufficient protection was provided by the requirements to comply with section 89(7) of the Transport Act 1985, the duty to publish reasons why the authority believes it has complied with section 89(7), the competition test in Schedule 10 to the Transport Act 2000 and the authority’s general accountability to auditors on all matters of financial management. Section 89(7) of the 1985 Act requires an authority issuing an invitation to tender to have regard to economy, efficiency and effectiveness, the implementation of the policies set out

⁵ Appendix B, Answer 2

in the appropriate bus strategy and the reduction or limitation of traffic congestion, noise or air pollution. Section 90(3) requires the authority to publish its reasons for considering that the payment of service subsidies to secure the service is in accordance with the terms of that tender. **We do not believe that these provisions address the specific concerns expressed by the OFT. We are satisfied that contracts would be required to pass the competition test in Schedule 10 to the Transport Act 2000 but it would be desirable for any contracts awarded for over five years to be automatically brought to the attention of the OFT, to enable it to ensure that the authority has provided clear evidence of the necessity of a longer contract.**

31. The Department suggested that it would be possible separately to amend the requirement under section 90(3) of the 1985 Act to cover the publication of reasons for letting a contract for more than five years. The Department indicated that it would be prepared to consider this option further “if it proved necessary in the light of experience.”⁶ However, no timetable for such further consideration was given.

32. We have reflected carefully on the Department’s response. While we do not consider that bus subsidy contracts should in no circumstances be let for more than five years (and neither did the OFT) it does not appear to us that the Department has satisfactorily addressed the OFT’s carefully reasoned arguments that such contracts would need clear and careful justification. The OFT summarised its advice during the consultation period thus: “[the OFT] does not consider that tenders in excess of five years are desirable unless the local authority can show clear evidence that such contracts are necessary...the local authority would need to justify the grant of a tender for more than five years and show that the restriction in terms of foreclosing the market for longer than five years is outweighed by the resulting benefits”. A requirement that an authority must notify the OFT of any bus subsidy contract let for more than five years, and of the reasons for letting such a contract, would not amount to a significant burden on such an authority. Such a requirement would mean no more than that an authority would need to share its decision to let a contract of that length, and its reasons for so doing, with the agency which ensures fair competition in the public interest. It would not add anything to the existing powers of the OFT, which as the Department itself says, already has powers of investigation it could apply to such cases. It would do no more than ensure the OFT was in an informed position, and thereby able to decide, on the basis of that knowledge, whether further consideration of the effect on competition of any contract longer than five years was required. **In the interest of ensuring fair competition and the provision of quality services to bus passengers, we therefore recommend that the proposed Order be amended to provide that any authority which lets a bus subsidy contract for a period of longer than five years must notify the OFT of the fact and give its reasons for doing so.**

33. **Leasing of buses by PTEs.** The Department considers that the current situation whereby PTEs cannot lease buses is anomalous and impairs their ability to improve the quality of bus services. The Department states that the provision which prevented PTEs from leasing buses was withheld in the 1985 Act in order to encourage PTEs to move from being service providers to service procurers and to move service operation from public to private operators. The Department’s view is that the PTEs powers to procure socially -

⁶ Appendix B, Answer 3

necessary services which are not provided on a commercial basis should now be enhanced by the restoration of a power to let vehicles for hire in the context of bus subsidy contracts.

34. We asked the Department to indicate whether it believed that PTEs will in practice offer vehicle leasing on an equal basis to all tenderers for a bus subsidy contract. The Department confirmed that sections 89 to 92 of the 1985 Act require that such agreements must be fairly tendered as described and that the basis of the service provision should be specified in the invitation to tender. On this basis, it reasons there would therefore be no opportunity for the authority to offer different terms to different operators.

35. We also asked the Department why it considers there is no longer a need to limit the power of PTEs to let vehicles, when at the time of the Transport Act 1985 it was considered necessary explicitly to disallow this. The Department explained that the original provisions of the 1985 Act had been made to address concerns that PTEs might protect companies in PTE ownership against competition, for example by retaining ownership of the vehicles and leasing them at more favourable rates than would be available to competitors. Since all the PTE-owned companies have since been sold to the private sector these concerns can no longer apply.⁷ **We are content that no protection would be lost, subject to the reservations expressed in paragraph 32.**

36. **PTC councillor dispensations.** The Department for Transport states that the protection provided by the 1985 Act designed to prevent PTC councillor directors from improperly influencing decisions by their Council with respect to the PTC is no longer required, since all councillors are now subject to the relevant Model Code of Conduct under the Local Government Act 2000. Each authority must have its own Code of Conduct but the Model Code can, if the Secretary of State or NAW so decide, make mandatory requirements in respect of the minimum standards which the Code of Conduct for each individual authority must contain. The Department argues that the Model Code regime provided under the Local Government Act 2000 offers a more effective protection against councillors improperly affecting decisions relating to PTCs.

37. Section 74 of the 1985 Act provides that a director of a PTC who is a member of a relevant authority shall not take part in discussion by the authority of any contract or proposed contract or any other matter relating to the activities of that company, or a subsidiary of the company, and neither may he vote on those matters. The restriction is qualified by section 74 (3B) which provides that it does not prohibit a person from taking part in the consideration of, or discussion of, or from voting on, any question with respect to a local transport plan or bus strategy. The Secretary of State or NAW, as the case may be, may however grant a dispensation under section 74(4) to a councillor who is otherwise so disqualified to enable him to take part in discussion of, and to vote on these matters. Where a person fails to comply with the disqualification provision, he commits an offence and may be subject on summary conviction to a fine, currently set at up to £2,500 (under section 74(7)). The protection derived from the 1985 Act therefore takes the form of a general disqualification, from which exemptions may be granted at the discretion of the Secretary of State/NAW, and which is supported by criminal sanctions for non-compliance.

⁷ Appendix B, Answer 5

38. Section 50 of the Local Government Act 2000 provides that the Secretary of State and NAW may issue a Model Code as regards the conduct of members of relevant authorities, to which authorities must have regard when framing their Code of Conduct for their own members. Such Model Codes made under the 2000 Act may include both mandatory and option provisions. Where they are mandatory, local authorities must include those provisions in their own Codes of Conduct. Protection under the 2000 Act is therefore derived from each authority's Code of Conduct.

39. Model Codes of Conduct currently in force in England and Wales are supplied by the Conduct of Members (Model Code of Conduct) (Wales) Order 2001 and the Local Authorities (Model Code of Conduct) (England) Order 2001.⁸ These provide that a member of an authority has a personal or prejudicial interest in a matter where a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the member's judgement of the public interest. A member who has such an interest in any matter is required by the Model Codes to withdraw from the room when it is being discussed and may not exercise any executive function in relation to it, or improperly influence a decision about it. A dispensation from this requirement may be granted by the authority's own Standards Committee. The Standards Board for England (or Commissioner for Local Administration in Wales) has power to investigate allegations of impropriety, and non-criminal sanctions for breach of the Codes can be imposed by the Standards Committee or the relevant Adjudication Panel for England or Wales. Sanctions include disqualification from serving as a member of the authority for a specified period.

40. While the 1985 Act provides an absolute form of disqualification from which the Secretary of State or NAW may grant a dispensation, the concurrent protection under the 2000 Act depends upon i) the Secretary of State or NAW using the Order-making power in the 2000 Act to create a Model Code of conduct and ii) that Model Code making provision to restrict PTC councillor directors from exercising improper influence (or individual authorities choosing to adopt such a standard in their own Code, where relevant provisions in the Model Code are not mandatory). Furthermore, the decision about whether a prejudicial interest exists is, in the first instance, one for the councillor concerned to take. The actual regulatory burden on any authority member derives from the specific provision made in their own authority's Code of Conduct for members, although provisions in that Code may have been incorporated by reason of compulsory provision in the Model Codes.

41. The Department's argument can be summarised by a sentence in the Consultation document: "We know of no reason why PTC councillor directors should be treated differently from councillor directors of other local authority-owned companies".⁹ It considers that all necessary protection would continue by virtue of the regime established under the 2000 Act and the relevant provisions in the 1985 Act are now superfluous. The Department also believes that this element of the proposal would strengthen the rights of councillors to contribute to local authority business and to represent their constituents' interests, which indicates that there would be a relaxation of the absolute statutory protection which is provided under the 1985 Act.

⁸ Available from the Office of Public Sector Information at www.opsi.gov.uk

⁹ Consultation document, paragraph 2.5.11

42. We asked the Department to provide further information about the operation of the section 74 regulations in the 1985 Act - specifically in terms of the number of prosecutions under the 1985 Act since the Local Government Act 2000 came into force and details of any exemptions granted by the Secretary of State or NAW which were currently in force. We also asked about the guidance available to councillors to help them recognise any prejudicial interest, and asked whether any monitoring was carried out to ensure that prejudicial interests did not influence decisions.

43. The Department's response was that it was not aware of any prosecutions at any time under section 74 of the 1985 Act and it suggested that this might be because the existence of the criminal penalty had been a sufficient deterrent. It also advised that a general but limited dispensation had been applied to all councillor directors in 1985 and that some individual dispensations had been granted from time to time since then on exceptional matters. Before the introduction of the Model Code, the practice had been to grant these sparingly, but that policy had since changed because of the existence of the Model Code and because the Department was minded to abolish the consent requirement. The Department stated that a dispensation was awarded in 2002 (and renewed in 2004) to the councillor Directors of Ipswich Buses Ltd which enabled them to speak and vote on all issues relating to the activities of Ipswich Buses Ltd or any of its subsidiaries. The Department confirmed that, although this wider dispensation had so far been granted in England only to directors of Ipswich Buses Ltd (and, we were informed on a separate occasion, directors of Thamesdown Transport Ltd)¹⁰ ministers would be unlikely to refuse a similarly full dispensation to any other authority which requested it, believing as they do that protection provided under the Local Government Act 2000 is fully sufficient.

44. We believe that the effect of the proposal would be to allow members to vote on PTC matters in meetings (provided that they considered they did not have a prejudicial interest in the issue) which they are not currently entitled to do under the 1985 Act. The purpose of the protection in the 1985 Act is to prevent members from improperly influencing council decisions relating to PTCs and it does so by imposing a general exclusion on participation in PTC business discussion and voting (although the effect is moderated by the dispensations granted). The intention of the Local Government Act 2000 protection is the same (but applies to all other interests, not just PTCs), but rather than applying general exclusions, it requires members to identify for themselves when prejudicial interests exist. The Department explained in its response to us that, under the English Code, comprehensive guidance is issued by the Standards Board (although this relates to interests generally rather than to the specific case of PTCs). English members are also able to seek advice about complying with the Code from their monitoring officer. The response did not mention any guidance for Welsh members, but states that Welsh members may seek advice from the authority's monitoring officer and they must have regard to any advice from the relevant standards committee. We are satisfied that this approach is more appropriate and that PTC councillor directors should be subject to the same single regime as other councillor directors. **We are therefore content that no necessary protection would be lost.**

¹⁰ see Appendix C

Estimates of costs and benefits

45. None of the proposals give rise to new fees or charges. The school transport proposal would reduce the need to pay fees by removing the requirement for certain local bus services to be registered, and may also reduce costs currently incurred by local education authorities in the management of registration systems.

46. The Department considers that the bus subsidy contract proposal has the potential to enable local authorities to negotiate more competitive terms with operators and to encourage investment by the industry in a more modern bus fleet.

47. The Department considers that the proposal to allow PTEs to lease buses to operators may increase competition and provide greater financial security for contracted operators. It also considers that the direct cost of buying the vehicles should be partly offset by better value tenders or may be justifiable in terms of better quality service provision and that there could be an increase in the number of fully accessible vehicles, which would benefit passengers with mobility problems.

48. The Department's assessment is that there will be a small, but not insignificant, saving of time and cost for central and local government associated with the PTC councillor dispensation proposal, in that papers need not be prepared for dispensation requests and decisions will not be required from the Secretary of State or National Assembly for Wales.

49. We consider that the Department has made reasonable efforts to foresee the costs, savings and other benefits which could arise from the proposal.

Adequate consultation

50. A consultation document on the proposal was published by the Department on 23 December 2004. The consultation period ran for 14 weeks until 31 March 2005. The Department indicates that all representations were taken into account even though some were received after this date. The consultation document was sent to a range of national, devolved and local government bodies, bus industry and user organisations, additional Welsh bodies, organisations with special interests in the leasing of buses and organisations with special interests in councillor dispensations. 61 bodies were sent the document and 19 responses were received. The consultation document was also made available on the websites of the Department and the Cabinet Office.

51. The Department also referred the consultation document to the National Assembly for Wales (as required by section 5(1) of the Regulatory Reform Act) and the Scottish Executive. The Department states that the Welsh Assembly Government had been extensively consulted prior to the issue of the consultation document and that Welsh Assembly Ministers had agreed in principle that the proposed changes should apply to Wales as well as England and that the Assembly was content for the proposals to be laid before Parliament.

52. Most of the respondents to the consultation were broadly in agreement with the purpose and form of the proposed Order, although a number of specific concerns were expressed.

53. School transport. Most of the respondents agreed with the school transport proposal. Several respondents expressed concern that the proposed change would result in the loss of the Bus Service Operators Grant for those services, but the Department explains in its statement that school services do not qualify for the Grant anyway if they do not have seats available for members of the public. The one respondent which objected, the Association of Local Bus Undertaking Managers, considered that all school services should continue to be registered with the traffic commissioners so as to maintain their enforcement standards over punctuality and reliability.

54. Since this proposal affects LEAs, we asked the Department why the consultation document was not sent to them. The Department explained that there had been widespread consultation with LEAs at an earlier stage, that the responses had been positive and so it had therefore considered it unnecessary to consult LEAs again individually. The Department stated that, since it had included the two main representative bodies, Confed and the LGA, and had published the consultation document on government websites, there had been ample opportunity for any LEA to make representations if they had wished to do so.¹¹

55. Bus subsidy contracts. One individual respondent from the Nottingham Business School disagreed with this proposal on the basis that longer contracts would lead to less competition in the longer term. The Institution of Highways and Transportation expressed concerns that eight-year contracts might overly restrict local authorities' flexibility and suggested that a better approach would be to provide an option for review after five years with the possibility at that stage of extending the contract to eight years. The OFT also expressed reservations about the length of contracts and stated that it would expect five years to remain the norm, with longer contracts let only when there was clear evidence of benefit.¹²

56. Leasing of buses by PTEs. Three respondents suggested that the facility for leasing buses should be qualified so as to ensure that the option for leasing would be available equally to all tenderers and not solely at the discretion of the PTEs. The view of the Confederation of Passenger Transport (UK) was that this was necessary so as to avoid the risk of contracting procedures involving PTE-owned vehicles being distorted to favour particular market segments, and it suggested that this could best be dealt with by an additional clause in Section 9A(4) of the 1968 Act.

57. PTC councillor dispensations. All of the respondents which expressed a view agreed with this proposal. Blackpool Transport Services Ltd welcomed the removal of restrictions which would enable PTC councillor directors to speak on general transport issues at council meetings. The Association of Transport Co-ordinating Officers expressed a view that the provisions of the Local Government Act 2000 would be sufficient to provide the necessary safeguards.

58. We consider that the proposal has been the subject of, and taken appropriate account of, adequate consultation.

¹¹ Appendix B, Answer 12

¹² See paragraphs 28-32

5 Conclusion

59. We conclude that a draft Order amended as indicated at paragraph 32 should be laid before the House.

Formal minutes

Tuesday 31 January 2006

Members present:

Andrew Miller, in the Chair

John Hemming
Dr Doug Naysmith
Bob Russell

Alison Seabeck
Mr Andrew Slaughter
Ms Angela C Smith

The Committee deliberated.

Draft Report [Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 59 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.

[Adjourned till a day and time to be fixed by the Chairman.]

List of written evidence

A	Letter from the Committee Specialist to the Department for Transport	21
B	Letter from the Department for Transport to the Committee Specialist	24
C	E-mail from the Department for Transport to the Committee Specialist	29
D	E-mail from the Department for Transport to the Committee Specialist	30

Appendix A

Letter from the Committee Specialist to the Department for Transport

Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006: request for information

Thank you for the presentation which you and Philip West made to the Regulatory Reform Committee yesterday on the subject of this RRO proposal.

The Committee subsequently considered the proposal and decided to seek your further comments on a number of points. The issues which concern the Committee are set out below, under the relevant categories for consideration in the Regulatory Reform Act and the Committee's Standing Order (references to the Standing Order are printed below in italics).

Whether the proposal requires elucidation, is not written in plain English or appears to be defectively drafted (S.O. 141 (6)(h))

1. The Committee notes that Article 3(3) of the draft Order would insert a new paragraph (viiiid) in section 10(1) of the Transport Act 1968. This would allow PTEs to lease buses to operators for the provision of services under bus subsidy contracts. There already exists a paragraph (viii), which on its face allows PTEs to lease buses generally. That provision no longer applies to any of the PTEs in Great Britain by virtue of a series of orders made in 1986 under section 60(5) of the Transport Act 1985. It would have been possible, when those Orders were made, to repeal paragraph (viii) using a power in section 60(7), but this was not done.

2. Section 10(1) as amended by the proposed Order would therefore contain on its face both a general power to lease and a new, similar but more limited power. The general power would continue to have no effect. On this basis it appears to the Committee that paragraph (viii) could be repealed by an incidental or consequential provision in the proposed Order.

Q 1 Please explain why the Department has not taken the opportunity to repeal section 10(1) (viii) of the Transport Act 1968.

Whether the proposal has the effect of continuing any necessary protection as required in Section 3(1)(a) of the Regulatory Reform Act 2001 (S.O. No 141(6)(c))

3. Article 2(2) of the proposed Order would amend section 6 of the Transport Act 1985 to exempt certain bus services provided by Local Education Authorities pursuant to obligations placed on them by the Education Act 1996 from an existing obligation to register those services with the transport commissioner for the area. The Department argues in its statement that, because these bus services are provided under contract to the LEA, the LEA will be able to use that contract to enforce standards of reliability and punctuality with respect to the service.

Q 2 Please explain how the Department considers protection with respect to reliability and punctuality of services would be maintained by means of contracts.

4. Article 2(4) of the proposed Order would amend section 90(1) of the Transport Act 1985 to provide that a bus subsidy contract can extend to a term of 8 years, rather than 5 years as currently provided. The Committee notes that Office of Fair Trading has expressed concern at this element of the proposal and has recommended that a contract of longer than 5 years should only be awarded where the local authority can show clear benefits to doing so which would outweigh the restrictive market effect of such an extended contract.

Q 3 In the light of the OFT's concern, please explain whether the Department has given any consideration to making provision to ensure that competition is not restricted without compelling reasons, for example by requiring that, where an Authority offers a contract for more than 5 years shall have a duty to publish its reasons for doing so, thus bringing the matter thereby to the attention of the OFT for its consideration, and if the case so warrants, for its further investigation.

5. Article 3 of the proposed Order inserts provision to section 10(1) of the Transport Act 1968 to give passenger transport executives power to let passenger vehicles to providers of subsidised passenger transport services under that Act. The Committee notes that the Office of Fair Trading advised that contracts of longer than five years should not be offered where a passenger transport executive intends to lease a vehicle to the service operator because such an operator would not be required to make investment in purchasing new vehicles.

Q 4 Please explain in detail why the Department has decided not to accept the view of the OFT that contracts longer than five years should not be offered when the PTE also intends to lease vehicles to the bus operator.

Q 5 Please explain why the Department does not consider there is any need to limit the power of PTEs to let vehicles in the context of bus subsidy contracts when the at the time of the Transport Act 1985 it was considered necessary explicitly to disallow this.

Q 6 Please indicate whether the Department believes that PTEs will in practice offer vehicle leasing on an equal basis to all tenderers for a bus subsidy contract, and if it does, whether it would accept that it would ensure necessary protection to require them to do so in law in the interest of fair competition.

6. Article 2(3) of the proposed Order would repeal sections 74(3) to (12) of the Transport Act 1985, so that the involvement in Authority business of members who are directors of public transport companies would in future be regulated by the Code of Conduct for members of that Authority, and by any relevant provisions of the relevant Model Code made by the Secretary of State or National Assembly for Wales under the Local Government Act 2000. The Department has stated that it knows of no reason why PTC Councillor Directors should be treated differently from Councillor Directors of other local authority owned companies.

Q 7 Please indicate how many, if any, prosecutions of PTC Councillor Directors there have been under section 74 of the 1985 Act since the coming into effect of the Local Government Act 2000.

Q 8 Please indicate how many exemptions granted by the Secretary of State and NAW under the Transport Act 1985 to PTC Councillor Directors are presently in force.

Q 9 Please indicate whether, given the onus which the Transport Act 2000 lays on individual directors themselves to recognize where they may have a prejudicial interest in a matter relating to Authority discussions of bus strategy, there is adequate guidance available to such councillor directors and what form such guidance takes.

Q 10 Please explain what monitoring is carried out to ensure that prejudicial interests do not influence decisions.

Whether the proposal has been the subject of, and taken appropriate account of, adequate consultation (S.O. 141 (6)(d))

7. The explanatory statement records that the National Assembly for Wales has been extensively consulted prior to the issue of "the document". The Order extends to England and Wales equally, and the proposals concerning Bus Subsidy Contracts and PTC Councillor Dispensations are devolved matters in Wales. The statement records that Welsh Assembly Ministers have agreed in principle that these proposed provisions should have effect in Wales.

Q 11 Please confirm whether the agreement of the Welsh Assembly Ministers extends to the actual form of the proposed legislation.

8. The Committee has noted that the Consultation document on this proposal does not appear to have been sent to Local Education Authorities.

Q 12 Please explain why the consultation document was not sent to LEAs and explain how the impact of the proposal in Article 2(2) has been assessed without the involvement of LEAs in the consultation process.

Other matters arising from the Committee's consideration of the proposal (S.O. 141(5))

9. The Committee notes that Article 2(2) of the proposed Order would exclude from the requirement to register with the traffic commissioner those bus services provided by LEAs in pursuance of their obligations under the Education Act 1996 which are for the carriage only of persons receiving education at the premises to which the vehicle travels, those escorting such persons, or a person involved with the provision of education at those premises. It therefore needs to be considered whether this provision, while welcome in itself, might inhibit LEAs from accepting some fare paying passengers on services otherwise falling wholly within the scope of the proposed provision, with a concomitant loss of revenue and diminution of service to the general travelling public, particularly in areas not otherwise well-served with passenger transport.

Q 13 Please indicate whether the Department considers that making such a provision might have an unintended consequence in respect of an effect on the willingness of authorities to provide limited or occasional fare paying places for the public on buses otherwise provided wholly for the purpose of school transport, and if not, why not.

I would be grateful to receive your response to these questions, together with any additional information which the Commissioners believe would be helpful to the Committee not later than noon on **Monday, 9 January**.

14 December 2005

Appendix B

Letter from the Department for Transport to the Committee Specialist

Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006: response to request for information

Thank you for your letter of 14 December setting out the questions put by the Committee following my presentation on the previous day.

I have set out responses to these questions in the Annex to this letter. I am grateful to many colleagues in other Government Department and in the Welsh Assembly Government for their help in putting this together.

Q1 Please explain why the Department has not taken the opportunity to repeal section 10(1) (viii) of the Transport Act 1968.

A1. In the draft of the proposed Order attached to the Consultation Document, section 10(1)(viii) was substituted, so the question of a repeal did not arise at that time. The provision was redrafted as a freestanding paragraph to make it clearer that the proposed provision is a new power rather than the revival of a power which had been disappplied, by virtue of orders made under section 60(5) Transport Act 1985, in relation to all the cases to which it could apply and is therefore effectively spent. There would then be no danger of confusing the old (and broader) spent power with the new one: nor would there be confusion regarding the status of the orders made under section 60(5) of the 1985 Act.

The repeal of section 10(1)(viii) by this RRO would raise other issues concerning section 60 of the Transport Act 1985. Subsection (7) of that section itself provides for the repeal of both paragraphs (i) and (viii) of section 10(1) and of section 24(2) of the Transport Act 1968 (duty of PTE to co-operate with the National Bus Company and Scottish Transport Group). None of those provisions has in fact been repealed, though they are all effectively spent.

It appears that it would still be possible to use the power in section 60(7) to repeal all these spent provisions by Statutory Instrument. Since the purpose of doing so would be to tidy the statute book rather than to lift burdens, that would be the more appropriate mechanism to use.

We should make it clear that from the Government's point of view this is entirely a technical matter and not one of policy, and we are anxious to find the neatest solution to the problem.

Q2 Please explain how the Department considers protection with respect to reliability and punctuality of services would be maintained by means of contracts.

A2. We do not consider that there would be a loss of protection. The protection afforded by the Traffic Commissioners depends on complaints by the public, local authorities or other operators, that a service is unreliable or unpunctual. These complaints may be either to the Traffic Commissioners or to the Vehicle and Operator Standards Agency (VOSA) which provides the Bus Compliance Officers who monitor bus service. Parents or pupils affected by the poor performance of a school service are more likely to complain to the school or the LEA than to the Traffic Commissioners or VOSA. Irrespective of whether the services are registered or not, LEAs are in a position to enforce standards of service through appropriate conditions in the contract and, where appropriate, to claim damages for failure to fulfil these obligations or in extreme cases to terminate the contract.

Q3 In the light of the OFT's concern, please explain whether the Department has given any consideration to making provision to ensure that competition is not restricted without compelling reasons, for example by requiring that, where an Authority offers a contract for more than 5 years shall have a duty to publish

its reasons for doing so, thus bringing the matter thereby to the attention of the OFT for its consideration, and if the case so warrants, for its further investigation.

A3. Our current view is that sufficient protection is provided by the requirement for all such contracts to comply with section 89(7) of the Transport Act 1985 and with the Competition Test in Schedule 10 to the Transport Act 2000. The OFT has published guidance on the Competition Test with clear advice to use lengthy contracts only in appropriate cases. The OFT has powers of investigation under Schedule 10, either on receiving a complaint or on their own initiative. Local authorities will be aware of the possibility of such an investigation. There are further safeguards in the fact that under section 90(3) of the 1985 Act local authorities must publish reasons why they believe they have complied with section 89(7). More generally, they are accountable to their auditors on all matters of financial management.

Nevertheless, it would be possible to amend the requirement under section 90(3) of the 1985 Act to cover the publication of reasons for letting a contract for more than 5 years. This could therefore be done without the need to amend the primary legislation by RRO. We are not convinced that such a measure is needed, but would be prepared to give it further consideration, together with the OFT and stakeholders, if it proves necessary in the light of experience.

Q4 Please explain in detail why the Department has decided not to accept the view of the OFT that contracts longer than five years should not be offered when the PTE also intends to lease vehicles to the bus operator.

A4. As mentioned in A3 above, we consider that the Competition Test provides an adequate safeguard. If a PTE (or any other local authority) follows the OFT's guidance it will see that it would not be appropriate to let a long contract in a case where the operator does not incur expenditure on investment.

Q5 Please explain why the Department does not consider there is any need to limit the power of PTEs to let vehicles in the context of bus subsidy contracts when the at the time of the Transport Act 1985 it was considered necessary explicitly to disallow this.

A5. The effect of the Transport Act 1985 was that PTEs were obliged to convert their in-house bus undertakings to Public Transport Companies operating on commercial lines, though still in PTE ownership. There was concern that the PTEs might use their powers to protect these companies against competition, for example by retaining ownership of the vehicles and leasing them at more favourable rates than would be available to competitors. We assume it was to prevent practices of that kind that the leasing power was disallowed in 1986. However, all the PTE-owned companies have subsequently been sold to the private sector and the relationship between the PTEs and the companies has totally changed. Hence these concerns no longer apply.

Meanwhile, the enactment of Part 1 of the Local Government Act 2000 has given all-purpose local authorities a general power to do anything which promotes well-being in the community provided it is not explicitly prohibited, which was not the case in 1985. That has enabled them, prudently and selectively, to purchase buses for the purpose of leasing them to successful tenderers for contracted services. We consider there is no logical reason why the PTEs should not be able to do the same.

Q6 Please indicate whether the Department believes that PTEs will in practice offer vehicle leasing on an equal basis to all tenderers for a bus subsidy contract, and if it does, whether it would accept that it would ensure necessary protection to require them to do so in law in the interest of fair competition.

A6. The power of PTEs to enter into agreements providing for service subsidies to secure public passenger transport services given under s9A(4) of the Transport Act 1968 is expressed to be exercisable subject to sections 89 to 92 of the Transport Act 1985. These sections provide that such agreements must be fairly tendered as described and the "basis" of the service provision should be specified in the invitation to tender. Hence, if the option or obligation to lease vehicles is included in a subsidy agreement, it will be fairly tendered as part of such agreement and there will be no opportunity for the authority to offer different terms to different operators. Also, EU procurement and state aid rules prevent discrimination and ensure leasing is done on commercial terms.

Q7 Please indicate how many, if any, prosecutions of PTC Councillor Directors there have been under section 74 of the 1985 Act since the coming into effect of the Local Government Act 2000.

A7. We are not aware of any prosecutions under section 74 of the 1985 Act either before or after the coming into effect of the Local Government Act 2000. The fact that the penalty exists has presumably been a sufficient deterrent.

Q8 Please indicate how many exemptions granted by the Secretary of State and NAW under the Transport Act 1985 to PTC Councillor Directors are presently in force.

A8. A general (but limited) dispensation to all councillor directors was conferred by the then Secretaries of State for Transport and for Wales in 1985, and its text appears as Annex 5 to the Joint Circular of 6 December 1995 (Circular 4/85 (Department of Transport) and 63/85 (Welsh Office) and is attached to this letter. This allows members to present their view on certain matters relating to their company, but not to vote on such matters. Individual dispensations are requested from time to time to allow members exceptionally to vote on any matter or to speak on matters excluded from the general dispensation. Until 2002, the practice was to grant these dispensations sparingly, and for a limited time. However, in 2002 Ministers agreed to a request from Ipswich Borough Council that, since the Model Code under the Local Government Act 2000 was now in force, and we were minded to abolish the consent requirement, their Councillor Directors could be given a dispensation to speak and vote on all issues relating to the activities of Ipswich Buses Ltd or any of its subsidiaries. That dispensation was renewed in 2004 for the present Councillor Directors of Ipswich Buses Ltd.

Q9 Please indicate whether, given the onus which the Transport Act 2000 lays on individual directors themselves to recognize where they may have a prejudicial interest in a matter relating to Authority discussions of bus strategy, there is adequate guidance available to such councillor directors and what form such guidance takes.

A9. We assume this refers to the Local Government Act 2000 rather than the Transport Act 2000. It is true that the codes of conduct under that Act place the onus on a councillor to decide whether his interest is a prejudicial one, but there is sufficient support and guidance available, this being one advantage of using a code of general application to all prejudicial interests rather than one specific to Public Transport Companies.

Under the English code, comprehensive guidance is issued by the Standards Board for England. This guidance relates to interests generally rather than the specific case of PTCs. Members can also seek advice from their Monitoring Officer or local standards committee.

A member has a prejudicial interest in an issue when he has an interest which a member of the public would reasonably regard as so significant that it would be likely to prejudice the member's judgement of the public interest. A member with a prejudicial interest in an issue is required to withdraw from the meeting where that issue is being discussed. However, the Government has recently announced its intention to amend English the code of conduct, following a review by the Standards Board for England. One of the changes proposed would allow a member with a prejudicial interest in a matter to speak at a meeting but withdraw before the vote. This change would support members' advocacy role.

Though framed differently, the code of conduct in Wales also requires members to exercise personal responsibility in deciding whether they have an interest that should be disclosed. Subject to the nature of that interest, the member may be able to speak but not vote on a matter, or may be required to withdraw altogether. The Welsh code expressly provides that members may seek advice from the authority's monitoring officer and they must have regard to any advice from the relevant standards committee.

The Welsh code of conduct, like the English one, is currently under review. The Assembly Government is considering whether to adopt a similar approach to that being proposed in England, outlined above, regarding speaking at meetings.

Q10 Please explain what monitoring is carried out to ensure that prejudicial interests do not influence decisions.

A10. There is no explicit monitoring of this kind. However, as mentioned in A9 above, members can seek advice from their Monitoring Officer on complying with the code of conduct. Furthermore, allegations that a member has breached the code of conduct can be made, in England to the Standards Board, or, in Wales, to the Public Services Ombudsman (formerly the Commission for Local Administration in Wales).

Q11 Please confirm whether the agreement of the Welsh Assembly Ministers extends to the actual form of the proposed legislation.

A11. On 13 July 2004 Welsh Assembly Government Ministers approved that:

- The proposed consultation document to be issued by DfT on its behalf and on behalf of the Welsh Assembly Government; and
- The proposed distribution of the document to relevant bodies in Wales.

The Assembly was included in the consultation (which included a draft of the Order) and, although they did not send a formal response, confirmed to the Department that they are happy for the proposals to be laid before Parliament. The Assembly's own procedures require that the Order be debated in plenary session. This will be arranged to take place after the two Parliamentary Committees have reported and any amendments to the drafting of the Order have been made, but before the second stage debates at Westminster.

Q12 Please explain why the consultation document was not sent to LEAs and explain how the impact of the proposal in Article 2(2) has been assessed without the involvement of LEAs in the consultation process.

A12. The proposal in Article 2(2) had effectively been consulted on previously. It was first put forward in the joint DfT/DfES document Travelling to School: an action plan in 2003. Subsequently, on 8 March 2004, DfES published the consultation document, School Travel Schemes – Draft Bill and Prospectus. This included a specific question "Do the proposed changes to transport legislation address the concerns of LEAs wishing to run local travel schemes?" - the proposals in question were to exempt from registration pilot scheme services in the same circumstances as services delivered under existing Education Act powers would be exempt under the proposal in this RRO, and the consultation document made clear the intention of including that wider provision in an RRO (as did the debates in Parliament on the School Transport Bill).

The 2004 consultation document was sent to all Local Authority Chief Executives, LEA Chief Education Officers and to heads of Transportation & Highways Authorities. Copies were also sent to the teacher associations, governors' and parents' representative bodies, and representative bodies of denominational schools. 70 responses were received, including 27 from local authorities, and there were no adverse comments on the proposed changes to transport legislation.

Shortly after publication of the consultation document, the DfES in conjunction with the Confederation of Education Service Managers (Confed) and the Local Government Association (LGA) held two seminars on the draft Bill aimed at local authority transport and education officers, local authority members, and a small number of headteachers. These seminars were attended by a combined audience of around 240 people.

Because of this widespread consultation at an earlier stage, and the positive response to the relevant transport proposal, the two Departments did not consider it necessary to reconsult LEAs individually on the proposed RRO. However, the two main representative bodies, Confed and the LGA were consulted and the consultation document was published on both DfT and Cabinet Office websites. There was therefore ample opportunity for any LEA to make representations if they had wished to do so.

Q13 Please indicate whether the Department considers that making such a provision might have an unintended consequence in respect of an effect on the willingness of authorities to provide limited or

occasional fare paying places for the public on buses otherwise provided wholly for the purpose of school transport, and if not, why not.

A13. Our intention is to increase flexibility and choice in providing school transport, and no new burdens will be created. Local authorities who currently make seats available to members of the general public will be no worse off under this proposal, while those who currently make seats available to paying pupils but not the general public will benefit. Which of these alternatives is preferable will depend on local circumstances, including in particular the availability of other forms of public transport.

There is admittedly the risk that some local authorities who currently allow the general public to use the services will decide instead to exclude them in order to avoid the requirement to register the services. However there is a considerable disincentive to their doing so, since if they exclude the general public they will make the service ineligible for Bus Service Operators Grant (BSOG). BSOG goes to the operator rather than the LEA but will be reflected in lower tender prices and therefore will benefit the LEA. We consider that the disincentive of losing BSOG is a more than sufficient counterbalance to any perverse incentive to exclude the public to avoid the registration requirement.

We understood from the oral presentation that the committee had some concerns that the regulatory change could place obstacles in the way of people (eg parents or other relatives) who want occasionally to accompany a child on a journey to school (eg if the child was sick or injured). For example, they asked whether to allow such a person to use the service would bring the service back into the category that required registration, which would be a significant disincentive. We have considered this matter further and do not see it as a serious problem. The provision would allow the use of the service at separate fares by any person receiving education at the premises in question, by a person supervising or escorting such a person, or by a person involved with the provision of education at those premises. There is no requirement that these should be regular users - a newly enrolled pupil, or one attending a particular course only, would be able to use the service without any formality. So too would persons occasionally supervising or escorting a pupil at the school. It appears that the "occasional carers" mentioned above would fall within that category, since the words "supervising or escorting" are not defined and would carry their normal meaning. Even if this did not apply in any particular case, the LEA would not be debarred from letting an individual travel in the vehicle, but only from charging that person a fare. We conclude therefore that it would be within the discretion of the LEA to allow an "occasional carer" to be regarded as a supervisor or escort, or alternatively to travel free, and it would be in their interests to see that the discretion was not abused.

9 January 2006

Appendix C

E-mail from the Department for Transport to the Committee Specialist

Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006: further information

You asked for clarification about the answer given to Q8 of your letter of 14 December in the Annex to my reply of 9 January. We spoke about this, but I have since had a further trawl through the files and as a result need to amend the advice in my letter.

My answer reported that in 2002 the Department received an application from Ipswich Council for a much broader dispensation for their three Councillor Directors in view of the new ethical code provisions in the Local Government Act 2000 and the Model Codes under that Act - and that this application was granted by Ministers.

While it was the application from Ipswich - to which the Standards Board for England (the national body monitoring the Model Code under the Local Government Act 2000) lent support - that caused the change in policy, I have now discovered that a similar dispensation was granted, also in 2002, to two Councillor Directors of Thamesdown Transport Ltd (the company owned by Swindon Borough Council).

In 2004, following the local government elections, Ipswich Council appointed two new Councillor Directors and sought dispensations on similar terms, which were duly granted. No similar application was received from Swindon Council and I assume those Directors are still in post, and the dispensations still extant.

We have no records of any other council applying for a broad dispensation of this kind, though if they had done, no doubt it would have been granted.

The answer therefore appears to be that **all councillor directors** enjoy the general dispensation granted by the Circular of 1985 referred to in my letter, and in addition, the councillor directors from **Ipswich** and **Swindon** Borough Councils (5 members in all) enjoy the broader dispensation to speak and vote on all issues relating to the activities of their respective companies and their subsidiaries.

It is clear from the papers on file that when Ministers considered the Ipswich case in 2002 they were of the opinion that the restrictions placed on Councillor Directors under the Transport Act 1985 were no longer necessary in view of the new Model Code system and should be disappplied when a suitable opportunity arose, and that this line was supported by ODPM and the Standards Board for England. ODPM have, of course, lent us support in pursuing the matter by means of this RRO proposal.

I hope this advice is helpful to the Committee. Please let me know if you need any further information.

19 January 2006

Appendix D

E-mail from the Department for Transport to the Committee Specialist

Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006: further information

I need to make another correction to my letter of 9th January concerning this proposed Order.

In paragraph 1 of your letter of 14 December last year, you raised a query in relation to the addition of a new paragraph (viid) to s10(1) of the Transport Act 1968, which gave PTEs the power to lease buses to operators for the provision of services under bus subsidy contracts.

You mentioned that paragraph (viii) of this section also purports to allow PTEs to lease buses generally, but since this power has been revoked in respect of all PTEs under orders made under s60(5) of the Transport Act 1985, it would be appropriate to revoke paragraph (viii) as an incidental or consequential provision in the Order.

We would like to correct the third paragraph of our response to this query. We stated that:

"...it would still be possible to use the power in section 60(7)[of the Transport Act 1985] to repeal all these spent provisions by Statutory Instrument. Since the purpose of doing so would be to tidy the statute book rather than to lift burdens, that would be the more appropriate mechanism to use."

Peter Milledge, counsel to the HL Delegated Powers and Regulatory Reform Committee has since pointed out that section 60(7) can no longer be used for this purpose, since it is exercisable only:

"...on the date on which, by virtue of the cumulative effect of orders made under this section, there ceases to be any [PTE] in Great Britain who... have the powers under section 10(1)(i) and (viii)."

Since this date has long since passed, in respect of both paragraphs, the power in section 60(7) no longer exists.

We should be grateful therefore if you would alert the Regulatory Reform Committee to this fact on our behalf.

24 January 2006

Reports from the Regulatory Reform Committee in the last Session of Parliament

Session 2004-05

First	Proposal for the Regulatory Reform (Joint Nature Conservation Committee) Order 2005	117
Second	Proposal for the Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004	118
Third	Proposal for the Regulatory Reform (Prison Officers) (Industrial Action) Order 2004	148
Fourth	Draft Regulatory Reform (Joint Nature Conservation Committee) Order 2005	270
Fifth	Draft Regulatory Reform (Prison Officers) (Industrial Action) Order 2005	271
Sixth	Draft Regulatory Reform (Trading Stamps) Order 2005	272
First Special	Operation of the Regulatory Reform Act 2001	273
Seventh	Draft Regulatory Reform (Execution of Deeds and Documents) Order 2005	429
Eighth	Draft Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005	430
Ninth	Draft Regulatory Reform (Fire Safety) Order 2005	495
Second Special	Government Response to the Committee's First Special Report of Session 2004-05: Operation of the Regulatory Reform Act 2001	431

All reports are available from The Stationery Office.

Reports from the Regulatory Reform Committee in the present Session of Parliament

Session 2005-06

First	Proposal for the Regulatory Reform (Forestry) Order 2006	729
Second	Legislative and Regulatory Reform Bill	878