

WMCA Board

Date	11 January 2019
Report title	West Midlands Bus Byelaws
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Report has been considered by	Strategic Transport Officers Group - 26 November 2018 Programme Board - 21 December 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Support in principle, the introduction of byelaws on the West Midlands bus network.
- (2) Review and comment as desired, the proposed set of byelaws and delivery mechanism as detailed in Appendix 'A' and section 3.
- (3) Approve the commencement of byelaw application process and public consultation framework detailed in section 6.

1. Purpose

- 1.1 To detail a proposed set of bus byelaws to WMCA Board which aim to further enhance TfWM's ability to combat nuisance incidents on the network and address wider anti-social behaviour issues within our communities. The development of bye laws on our buses will provide the first of a package of measures, supporting further work emerging within the WMCA on wider scale behaviour change programmes.
- 1.2 To detail the byelaw application process to WMCA Board and agree their support to commence the same with Ministry for Housing Communities and local Government (MHCLG) including public consultation
- 1.3 Subject to all approvals, outline timescales for proposed implementation

2. Background and rationale

- 2.1 The Congestion Management Plan, agreed by WMCA Board in September 2018, identifies passenger perception of personal safety as a very real barrier to public transport use. Further tools to tackle anti-social behaviour on the public transport network will contribute to this plan in 1) encouraging increased demand for bus services through customers feeling safer and 2) improving efficiency, lessening delays due to anti-social incidents, with police more readily able to remove perpetrators from services where appropriate.
- 2.2 Research carried out in conjunction with Transport Focus has shown clearly that there is a direct correlation between passenger perception of personal safety and low level nuisance and anti-social behaviour (ASB). In fact that correlation is higher than the correlation with actual recorded crime. Furthermore, DfT research has suggested 11.5% for public transport journeys would be made if people felt safer.
- 2.3 The Safer Travel Partnership put in place a dedicated Anti-Social Behaviour Team which has led to a number of successes, and there has been an improvement in the number of people feeling that ASB is a problem on their bus journey. The powers available to the ASB team has increased with the West Midlands Combined Authority (Function and Amendments) Order 2017, but there still remains an notable gap in powers to support an improvement in operational performance.
- 2.4 On the Railway, there exists 24 bye laws made in 2005 by statutory instrument under section 219 of the Transport Act 2000. The powers cover passenger conduct and behaviour, equipment and safety, control of premises and travel and fares. On Midland Metro, there exists a number of powers. Not only do the same powers as those with railways exists, but also additional powers under the Midland Metro (Penalty Fares) Act 1991.
- 2.5 There exist no such equivalent bye laws on the bus network, with staff relying on Bus Operators own "Conditions of Carriage" not enforceable in criminal law. The Safer Travel Police team have regularly indicated that they sometimes feel their hands are tied when dealing with low level nuisance incidents. They are strongly supportive of implementing bus bye laws.

- 2.6 Adding further powers to tackle ASB on the bus network forms a deliverable within the Police and Crime Commissioners Safer Travel Plan and therefore forms a deliverable within the WMCA Annual Plan.
- 2.7 The proposed byelaws have been formulated based on the nature of nuisance incidents occurring on the bus network. They take account of the views of West Midlands Police and TfWM Officers and reflect relevant content within Bus Operators existing 'Conditions of Carriage.'

3. Application of Byelaws

- 3.1 It is proposed that the byelaws are effective both on a bus, but also at bus stations, bus shelters and bus stops and a 10 metre radius of the same.
- 3.2 For the purpose of the byelaws, this would be any public service vehicle used for the transportation of paying passengers. All bus companies within the WMCA boundary would apply.
- 3.3 For the purpose of the byelaws, this would mean road transport garages, depots, bus stations, shelters and other road transport premises now or hereafter belonging to, leased to or worked by the Operator and the approaches thereto.
- 3.4 An authorised person means:
- a) a person acting in the course of his duties who is an employee, agent, contractor or sub-contractor of the West Midlands Combined Authority or is authorised by the West Midlands Combined Authority; or
 - b) any Police Constable, Police Community Support Officer or any person accredited by or under section 41 of the Police Reform Act 2002 acting in the execution of his duty upon or in connection with the premises or vehicle

4. Financial Implications

- 4.1 No additional budgetary requirements are required in order to enforce bus byelaws. There is no need to increase numbers of Safer Travel Police Officers as the use of byelaws would be an additional tool to tackle anti-social behaviour thus allowing them to do their job more efficiently.
- 4.2 Potential costs incurred by West Midlands Police in administering a system of fines will need to be discussed and actions agreed.
- 4.3 Financial impact of introducing bus byelaws will be offset over the long term by having penalty fines for convicted breaches.

5. Legal Implications

- 5.1 Following advice from Legal Services, it has been confirmed that West Midlands Combined Authority has the power to put in place byelaws to cover the whole of the West Midlands.

6. Approval process and consultation

6.1 The mechanism for the WMCA to make byelaws is 'The Byelaws (Alternative Procedure) (England) Regulations 2016.'

6.2 At the request of Strategic Transport Officers Group (STOG), it is intended that the 7 West Midlands Local Authorities will be part of a joint approach to communications through their websites and any other agreed means such as engagement events

Process prior to submission to MCHLG

6.3 Obtain in principle support from WMCA Board for the proposed list of Byelaws

6.4 TfWM will then conduct its own regulatory assessment as to the necessity, proportionality and effect of the Byelaws

6.5 The assessment will include initial consultation with such persons as we consider may be affected by the proposed byelaws. As well as the travelling public, due to the nature of the proposed byelaws and their subsequent application, it is planned to consult more formally and directly with bus operators, West Midlands Police and other key stakeholders such as Transport Focus, Equality groups including the disabled.

6.6 Once completed a 'Statement of the Assessment' needs to be published on WMCA's website and publicised more widely so those likely to be affected know about it.

6.7 Following consultation and assessment a formal application must be submitted to MHCLG for approval or refusal to make the byelaws. MHCLG must respond within 30 days.

Process following approval from MCHLG

6.8 Should MHCLG give leave to make the proposed byelaws the WMCA must formally advertise and consult on them by publishing a 'Notice' stating consultation period of no less than 28 days. The notice should identify the area to which the proposed byelaws will apply, give a summary of their intended effect, and specify where they may be inspected as well as how representations can be made.

6.9 The 'Notice' should be published on WMCA's own website and in one or more local newspapers circulating in the area to which the byelaws are to apply.

6.10 Feedback on the consultation including any objections should be fully considered before making any decision on making the new byelaws. This includes reporting to the West Midlands Combined Authority Board for final approval to 'make' the byelaws.

6.11 If the WMCA formally resolve to 'make' the proposed byelaws they shall be made under the common seal of the Authority and shall not come into force for a further 30 days. They must also be publicised for at least a 7 day period before implementation.

7. Anticipated timescales leading to implementation

- WMCA Board – initial report for approval – January 2019
- Regulatory assessment & initial consultation – February 2019

- Submit application for approval to HCLG (decision in 30 days) – March 2019
- Advertise & consult - formal 'notice' of consultation period – April/May 2019
- WMCA Board – feedback on consultation and final approval – May 2019
- WMCA formally make the byelaws & publicise (30 day period) – June 2019
- Byelaws are implemented – July 2019

8. Equalities Implications

WMCA will ensure through its regulatory assessment that the proposed byelaws are proportionate and do not have an unnecessary, excessive or disproportionate effect on individuals.

WMCA will do this consulting with local Equality groups including disability groups to make sure that their opinions are taken into account.

9. Inclusive Growth Implications

None

10. Geographical Area of Report's Implications

The West Midlands 7 constituent Local Authority Areas

11. Other Implications

None

Appendix 'A'

Proposed Byelaws and their enforcement

Management of queuing

- A requirement for any person to queue in order to regulate order or safety on or near the premises, on or near the vehicle.
- Any person directed by a notice to queue, or when asked to queue by an authorised person, shall join the rear of the queue and obey the reasonable instructions of any authorised person regulating the queue.

Control of potentially dangerous items

- Except with written permission from the Operator or an authorised person, no person shall bring with him, attempt to bring with him or allow to remain on the premises or vehicle any potentially dangerous item.
- A potentially dangerous item is an item which, in the reasonable opinion of an authorised person, may be used to threaten, annoy, soil or damage any person or any property.
- For example: a loaded weapon of any kind; flammable, explosive or corrosive substance; any item which is or may become dangerous.

Smoking / Vaping

- No person shall smoke or carry a lit cigar, cigarette, lighter, match, pipe or other lighted item on any part of the premises or vehicle on or which there is a notice indicating that smoking is not allowed.
- No person shall vape on any part of the premises or vehicle on or which there is a notice indicating that vaping is not allowed.

Intoxication

- No person shall enter, attempt to enter or remain at bus premises or on a vehicle where such a person is unfit to enter or remain at bus premises as a result of being in a state of intoxication. Intoxication means being under the influence of intoxicating liquor, drugs or other substance.
- No person shall enter, attempt to enter or remain at bus premises or on a vehicle while in possession of an open container of alcohol unless expressly permitted to do so by the Operator in a particular area.
- No person shall consume alcohol on the premises or on a vehicle unless expressly permitted to do so by the Operator in a particular area.
- If an authorised person reasonably believes that any person is unfit to enter or remain on the premises or vehicle, or is in possession of alcohol, then the authorised person may require him to leave; remove any alcohol and prevent him from entering or remaining on the premises or vehicle until the authorised person is satisfied that he is no longer in an unfit condition or no longer has any alcohol with him in contravention of this byelaw.

Unfit to travel

- No person shall enter or remain on the premises or vehicle, if, in the reasonable opinion of an authorised person, he is in an unfit or improper condition or his clothing may soil or damage the premises or vehicle, or any property or clothing of other users of the premises or vehicle.

Unacceptable behaviour

- No person shall use any threatening, abusive, obscene or offensive language on the premises or vehicle.
- No person shall behave in a disorderly, indecent or offensive manner on the premises or vehicle.
- No person shall write, draw, paint or fix anything on the premises or vehicle.
- No person shall soil any part of the premises or vehicle.
- No person shall damage or detach any part of the premises or vehicle.
- No person shall spit on the premises or vehicle.
- No person shall leave litter or waste on the premises or vehicle, except into receptacles specifically provided by the Operator for that purpose.
- No person shall molest or wilfully interfere with the comfort or convenience of any person on the premises.

Music, sound and advertising

- Except with written permission from the Operator no person on the premises or vehicle shall, to the annoyance of any person, sing or use any instrument, article or equipment for the production or reproduction of sound.
- Except with written permission from the Operator no person on the premises or vehicle shall, display anything for the purpose of advertising or publicity, or distribute anything; or, sell anything or expose or offer anything for sale; or, tout or solicit for money, reward, custom or employment of any kind.
- Any written permission granted, when undertaking these activities must be handed over for inspection when asked by an authorised person.

Stations and premises

- No person shall use any escalator except by standing or walking on it in the direction intended for travel.
- No person shall open a barrier or door on premises or a vehicle except where there is a notice indicating that it may be used by him or with permission from an authorised person.
- Where there is a notice by an entrance or exit on any part of the premises or vehicle indicating that it shall be used for entrance or exit only, no person shall enter by the exit or leave by the entrance.
- No person shall enter or leave by an emergency exit except in an emergency or when directed to do so by an authorised person.
- No person shall move, operate or stop any lift or escalator except: in an emergency by means of equipment on or near which is a notice indicating that it is intended to be used in an emergency; or, in case of a lift, by means of any of the controls intended for use by that person.

General safety

- No person shall move, operate, obstruct, stop or in any other way interfere with any automatic closing door, bus, or any other equipment on the premises or vehicle except: in an emergency, by means of any equipment on or near which there is a notice indicating that it is intended to be used in any emergency; or, any equipment intended for the use of passengers in that way in normal operating circumstances.
- No person shall place, throw, drop or trail anything on the premises or vehicle, which is capable of injuring, damaging, or endangering any person or any property.
- No person shall, without reasonable cause, activate any emergency system and/or communications system provided on any part of the premises or vehicle.

Obedience to safety instructions

- An Operator may issue reasonable instructions relating to safety at or on any premises or vehicle by means of a notice on or near that part of the premises or vehicle. No person shall, without good cause, disobey such notice.
- An authorised person may, in an emergency or in other circumstances in which he believes he should act in the interests of safety, issue instructions to any person on the premises or vehicle. No person shall, without good cause, disobey such instructions.

Unauthorised access or loitering

- No person shall enter, attempt to enter or remain on any part of the premises or vehicle, where there is a notice: prohibiting access; or, indicating that it is reserved or provided for a specified category of person only, except where he belongs to that specified category; unless invited or directed to do so by an authorised person.
- No person shall loiter on the premises or vehicle, if asked to leave by any authorised person.
- No person whilst on the premises or vehicle, shall wilfully obstruct or impede any authorised person in the execution of his duty.
- No person above the age of ten years shall enter, attempt to enter or remain in any part of the premises or vehicle which is marked or notified as being for the exclusive use of persons of the opposite gender to that person.

Obedience to traffic signs, causing obstruction and parking

- No person in charge of any motor vehicle, bicycle or other conveyance shall use it on any premises in contravention of any traffic sign.
- No person in charge of any motor vehicle, bicycle or other conveyance shall leave it or place it on any premises or vehicle: in any manner or place where it may cause an obstruction or hindrance to an Operator or any person using the premises or vehicle; or, otherwise than in accordance with any instructions issued by or on behalf of an Operator or an authorised person.
- No person in charge of any motor vehicle, bicycle or other conveyance shall park it on any premises where charges are made for parking by an Operator or an authorised person without paying the appropriate charge at the appropriate time in accordance with the instructions given by an Operator or an authorised person at that place.
- The owner of any motor vehicle, bicycle or other conveyance used, left or placed in breach of this byelaw may be liable to pay a penalty as displayed in that area.
- The owner of any motor vehicle, bicycle or other conveyance used, left or placed in breach of this byelaw may be clamped, removed, and stored, by or under the direction of an Operator or authorised person.
- The owner of the motor vehicle, bicycle or other conveyance shall be liable to an Operator or an authorised person for the costs incurred in clamping, removing and storing it.

Pedestrian Only areas

- Any person who enters, or is on, any part of the premises to which the public have access must be on foot, except: where there is a notice permitting access to that part of the premises to those with specified conveyances; or where an Operator or an authorised person has given permission. In either case he shall obey any instructions given by an Operator or an authorised person.
- No person shall be in breach of this byelaw for properly using a baby carriage or wheelchair, except where there is a notice or instructions given by an authorised person to the contrary.

Control of animals

- The Operator or an authorised person may refuse carriage or entry to any animal which, in their reasonable opinion, may threaten, annoy, soil or damage any person or property on the premises or vehicle.
- No person shall bring an animal on any part of the premises or vehicle to which it has been refused access pursuant to this byelaw.
- No person in charge of an animal shall allow it to foul or damage any property, vehicle, or other part of the premises.
- No person in charge of an animal shall leave or place it unattended on any part of the premises or vehicle, except: with the permission of the Operator or an authorised person; or, in a place provided for that purpose by the Operator and only for as long as is absolutely necessary and in accordance with any direction of the Operator or an authorised person.
- If the person in charge of an animal breaches any of part of this byelaw then that person: may be asked to remove that animal, and if he fails to do so immediately, then that animal may be removed by or under the direction of an authorised person; shall be liable to the Operator for the cost incurred by or on behalf of the Operator in removing and keeping it; and shall be liable to the Operator for the cost of putting any property soiled or damaged back into its proper condition.
- Any person in charge of an animal shall carry it when on a moving escalator on the premises, unless that animal is a trained assistance dog or police dog.

Ticketless travel

- No person shall enter a vehicle unless he has with him a valid ticket.
- A person shall hand over his ticket for inspection and verification of validity when asked to do so by an authorised person.
- No person shall be in breach of this byelaw if: there were no facilities in working order for the issue or validation of any ticket at the time when he began his journey; or, there was a notice at the premises or entrance to the vehicle where he began his journey permitting journeys to be started without a valid ticket; or an authorised person gave him permission to travel without a valid ticket.

Altering tickets

- No person shall alter any ticket in any way with the intent that an Operator shall be defrauded or prejudiced.
- No person shall knowingly use any ticket which has been altered in any way in breach of this byelaw.

Unauthorised buying and selling of tickets

- No person shall sell or buy any ticket.
- No person shall transfer or receive any unused or partly used ticket, intending that any person shall use it for travelling unless the conditions of use for that ticket specifically permit such transfer.
- No person shall buy a ticket on behalf of another intending to enable another person to travel without having paid the correct fare.
- No person shall transfer or produce a ticket on behalf of another person intending to enable that other person to travel without having paid the correct fare.
- No person shall knowingly use any ticket which has been obtained in breach of this byelaw.
- The sale or transfer by, or the purchase or receipt from, an authorised person in the course of his duties or from an authorised ticket machine is excluded from the provisions of this byelaw.

Name and Address

- Any person reasonably suspected by an authorised person of breaching or attempting to breach any of the Byelaws shall give his name and address when requested to do so by an authorised person.
- The authorised person requesting details under this Byelaw shall state the nature of the suspected breach of the Byelaws in general terms at the time of the request.

Enforcement

- Anyone reasonably believed to be in breach of these byelaws shall leave the premises or vehicle immediately if asked to do so by an authorised person.
- Any person who is reasonably believed by an authorised person to be in breach of any of these byelaws and who fails to desist or leave when asked to do by an authorised person may be removed from the premises or vehicle by an authorised person using reasonable force. This right is in addition to the imposition of any penalty for the breach of byelaw.
- No person shall fail to carry out the instructions of an authorised person acting in accordance with the powers given by these Byelaws or any other enactment.
- Prior to removal of a person, the authorised person shall state the nature of any breach of any of these byelaws in general terms prior to exercising the power conferred upon him.
- An authorised person shall produce a form of identification when requested to do so if exercising this power: This identification should state the name of his employer and contain a means of identifying the authorised person.
- No person shall be subject to any penalty for breach of any of the Byelaws by disobeying a notice unless it is proved to the satisfaction of the Court before whom the complaint is laid that the notice referred to in the particular byelaw was displayed.
- Penalty: Any breach of these Byelaws ultimately resulting in conviction for a summary offence may be liable to a penalty not exceeding Level 3 (maximum £1,000) on the standard scale of fines.