WELSH STATUTORY INSTRUMENTS

2009 No. 3293 (W.290)

PUBLIC PASSENGER TRANSPORT, WALES

The Quality Partnership Schemes (Wales) Regulations 2009

Made - - - -	*14 December 2009*
Laid before the National Assembly for Wales - -	*15 December 2009*
Coming into force - -	*1 February 2010*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the National Assembly for Wales by sections 119, 122 and 160(1) (a) (b) and (c) of the Transport Act 2000(**1**) and now vested in them.

The Welsh Ministers have consulted the Administrative Justice and Tribunals Council in accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(**2**).

PART 1

GENERAL

Citation, commencement, revocation and application

1.—(1) These Regulations may be cited as The Quality Partnership Schemes (Wales) Regulations 2009 and come into force on 1 February 2010.

(2) These Regulations apply in relation to Wales(**3**).

(3) The Quality Partnership Schemes (Existing Facilities) (Wales) Regulations 2002(**4**) are revoked.

(**1**) 2000 c. 38. Section 122 was amended by section 18 of the Local Transport Act 2008 (c. 26). The power to make Regulations under section 122 of the Transport Act 2000 rests with the "appropriate national authority", as defined in section 162(1) of that Act. The appropriate national authority is the National Assembly for Wales whose functions were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(**2**) 2007 c. 15. The effect of paragraph 24(1) of Schedule 7 to this Act is that the power of the Welsh Ministers to make procedural rules for any listed tribunal can be exercised only after consultation with the Administrative Justice and Tribunals Council. The traffic commissioners for England and Wales are a listed tribunal for the purposes of paragraph 24(1) by virtue of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (S.I.2007/2951).

(**3**) The power to make Regulations as respects Wales rests with the Welsh Ministers.

(**4**) S.I. 2002/3017 (W. 287).

Interpretation

2.—(1) In these Regulations—

"the Act" means the Transport Act 2000;

"the 1981 Act" means the Public Passenger Vehicles Act 1981(**5**);

"the 1985 Act" means the Transport Act 1985(**6**);

"admissible objection" has the meaning given in regulation 7;

"authority" means a local transport authority(**7**);

"lead authority" means—

(a) the authority which has made, or is proposing to make, a scheme; or

(b) where regulation 3 applies, the authority named as the lead authority in the notice of a proposed scheme given under section 115(1) of the Act;

"objector" means an operator who has made an objection in accordance with regulation 8;

"relevant operator" has the meaning given in regulations 5 and 6;

"scheme" means a quality partnership scheme;

"traffic commissioner" means, except for the purposes of regulations 5 and 7, the traffic commissioner for the Welsh Traffic Area.

(2) Any period of days prescribed in these Regulations is to be calculated excluding any day which is Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**8**).

(3) In these Regulations, where a person is required to consider whether an operator could be expected to secure an "appropriate rate of return" for operating services of a particular standard specified in any proposed or existing scheme, that person must have regard to the typical rates of return for operating local services of a comparable nature elsewhere in Wales.

Identification of lead authority

3.—(1) This regulation applies to any scheme containing a standard of services which includes requirements as to—

(a) the frequency or timing of services; or

(b) the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions;

which is made, or is proposed to be made, by two or more authorities acting jointly.

(2) Where this regulation applies, the authorities referred to in paragraph (1) must specify in the notice of the proposed scheme given in accordance with section 115(1) of the Act which of them is to act as the lead authority for the purposes of these Regulations.

(3) Where this regulation applies the lead authority must, before exercising powers in relation to any of the duties and responsibilities assigned by virtue of these Regulations—

(a) consult and seek representations from; and

(b) wherever appropriate, act in accordance with the representations of;

the other authority or other authorities by whom the scheme is made, or is proposed to be made, jointly with the lead authority.

(**5**) 1981 c. 14.
(**6**) 1985 c. 67.
(**7**) The term "local transport authority" is defined in section 108(4) of the Transport Act 2000.
(**8**) 1971 c. 80.

Services to be excluded from the application of section 114(6B) of the Act

4.—(1) This regulation applies where a local service is provided in accordance with a service subsidy agreement, or series of such agreements taken together, and that agreement or series of agreements has the effect described in paragraph (2).

(2) The effect is that by virtue of a requirement of the agreement or series of agreements, an operator provides services which would meet one or more relevant requirements.

(3) Where this regulation applies the restriction contained in section 114(6B) of the Act does not apply in respect of any relevant requirements.

(4) For the purposes of this regulation—

(a) a "service subsidy agreement" means an agreement made under section 9A(4) of the Transport Act 1968(**9**) or section 63(5) of the 1985 Act(**10**); and

(b) a "relevant requirement" means a requirement specified in a scheme, or proposed scheme, as to the standard of services to be provided in relation to the frequency or timing of services, or as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

PART 2

DETERMINATION OF RELEVANT OPERATOR AND ADMISSIBLE OBJECTION

Definition of "relevant operator"

5.—(1) For the purposes of sections 114(6B) and 122(3)(c) of the Act, "relevant operator" has the meaning given to it by this regulation and regulation 6.

(2) Subject to paragraphs (3) and (4) a "relevant operator" is an operator who, on the day on which an authority or authorities first give notice under section 115(1) of the Act of the proposal to make a scheme–

(a) is operating one or more local services in accordance with particulars registered under section 6 of the 1985 Act(**11**); or

(b) is eligible under section 6(4) of the 1985 Act(**12**) to have an application for registration accepted, and has made such an application to the traffic commissioner to register the particulars of one or more local services;

and the local service to which the registration or, as the case may be, application relates has one or more stopping places in the area to which the proposed scheme relates.

(3) Paragraph (2) does not apply to an operator when—

(**9**) 1968 c. 73. Section 9A(4) of the Transport Act 1968 was inserted by the Transport Act 1985, section 57(2), and has been amended by section 67 of the Local Transport Act 2008. There are other amendments which are not relevant to these Regulations.

(**10**) Section 63(5) of the Transport Act 1985 has been amended by section 68 of the Local Transport Act 2008. There are other amendments which are not relevant to these Regulations.

(**11**) Section 6 of the Transport Act 1985 has been amended by the Railways Act 2005, section 59(1) and Schedule 12, paragraph 8; the Education and Inspections Act 2006, section 85 and Schedule 10, paragraphs 2(1) to (3); the Local Transport Act 2008, sections 48(1) and (2) and 65(2) to (4); the Learner Travel (Wales) Measure 2008, sections 25 and 26, Schedule 1, paragraph 2, Schedule 2. It is also to be amended by section 49(1) to (4) of the Local Transport Act 2008 on a date to be appointed in accordance with section 134(3) of that Act. There are other amendments which are not relevant to these Regulations.

(**12**) Section 6(4) of the 1985 Act provides that an application to register a local service may only be accepted from a person who holds an unconditional PSV operator's licence issued under the Public Passenger Vehicles Act 1981, a permit granted under section 22 of the Transport Act 1985, or is proposing to use a school bus for the carriage of fare-paying passengers in accordance with section 46(1) of the Public Passenger Vehicles Act 1981.

(a) the operator has, in respect of a local service to which paragraph (2)(a) applies, submitted an application to the traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of that local service; or

(b) the operator has, in respect of an application to which paragraph (2)(b) applies, withdrawn that application;

and the effect of either sub-paragraph (a) or (b) is that the operator would not, at such time as the variation, cancellation or withdrawal takes effect, be operating any local services with one or more stopping places in the area to which the proposed scheme relates.

(4) Paragraph (2) does not apply to an operator of local services if the only services which that operator provides, or proposes to provide, and to which that paragraph would otherwise apply are services which, under the scheme as proposed by the authority or authorities in the notice given under section 115(1) of the Act, would be excluded from the scheme under section 116(3) of the Act.

Definition of "relevant operator" following modification of proposed scheme

6.—(1) This regulation applies where an authority or authorities, following consultation under section 115 of the Act, make a scheme under section 116(1) of the Act with modifications and those modifications have the effect described in paragraph (2).

(2) The effect is that an operator who did not, on the day referred to in regulation 5(2), satisfy the definition of a relevant operator in that paragraph would have satisfied that definition if the proposed scheme referred to in the notice given under section 115(1) of the Act had instead been the scheme as modified.

(3) Where this regulation applies the lead authority must, as soon as reasonably practicable, serve notice on any operator to whom paragraph (2) may apply informing that operator of the modifications to the proposed scheme.

(4) Regulations 8 to 15 apply to any operator on whom notice is required to have been served in accordance with paragraph (3) as if the reference in regulation 8(1) to the publication of a notice under section 115(1) of the Act was a reference to the service of a notice under paragraph (3) of this regulation.

Definition of "admissible objection"

7.—(1) For the purposes of sections 114(6B) and 122(3)(c) of the Act "admissible objection" has the meaning given to it in this regulation.

(2) An "admissible objection" is an objection—

(a) made in accordance with the procedure prescribed in regulation 8; and

(b) which satisfies either or both of the grounds described in paragraph (3).

(3) The grounds are that—

(a) for either or both of the reasons listed in paragraph (4), it would not be practicable for the objector to provide particular relevant services, or relevant services of a particular description, to a specified standard which would apply to those relevant services if the scheme as proposed in the notice given under section 115(1) of the Act were to be made; or

(b) taking into account the matters listed in paragraph (5), it would not be commercially viable for the objector, acting in a competent and efficient manner, to provide relevant services to a specified standard which would apply to those relevant services if the scheme as proposed in the notice given under section 115(1) of the Act were to be made.

(4) The reasons referred to in paragraph (3)(a) are that—

(a) additional vehicles would need to be procured by the objector, or existing vehicles upgraded, to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to procure the additional vehicles, or to upgrade existing vehicles, by the date specified in the proposed scheme; or

(b) additional staff would need to be employed by the objector to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to employ the additional staff by the date specified in the proposed scheme.

(5) The matters referred to in paragraph (3)(b) are–

(a) the likely cost to the objector of providing relevant services to the particular standard which would apply to those services if the scheme as proposed in the notice given under section 115(1) of the Act were to be made;

(b) the income which the objector would be likely to receive from operating the relevant services, taking into account any additional fare revenue which is likely to accrue as a result of the–

(i) provision of facilities by the authority, and

(ii) improvements to the standard of services,

if the scheme as proposed in the notice given under section 115(1) of the Act were to be made; and

(c) whether, taking into account the matters described in sub-paragraphs (a) and (b), the objector could be expected to secure an appropriate rate of return from the operation of the relevant services in the area to which the proposed scheme relates.

(6) Subject to paragraphs (7) and (8), for the purposes of this regulation "relevant services" means, in relation to a particular operator–

(a) all local services registered under section 6 of the 1985 Act in the name of that operator which have one or more stopping places in the area to which the scheme relates and in respect of which, on the day on which the authority or authorities first gave notice under section 115(1) of the Act, the registration was extant; or

(b) all proposed local services with one or more stopping places in the area to which the scheme relates in respect of which the operator had made an application to the traffic commissioner to register particulars under section 6 of the 1985 Act, and that application was made on or before the day on which the authority or authorities first gave notice under section 115(1) of the Act.

(7) A local service is not a relevant service for the purposes of this regulation if, after the day on which the authority or authorities first gave notice under section 115(1) of the Act–

(a) in respect of a local service to which paragraph (6)(a) applies, the operator submits an application to the traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of the service, and the effect is as described in paragraph (8); or

(b) in respect of a proposed local service to which paragraph (6)(b) applies, the operator withdraws the application to register the service.

(8) The effect is that, at such time as the variation or cancellation takes effect the local service or, as the case may be, proposed local service, which, but for paragraph (7) and this paragraph, would be a relevant service, has no stopping places in the area to which the scheme relates.

Procedure for making an objection

8.—(1) An operator who wishes to object to a requirement falling within section 114(6)(b) or (6A) of the Act must make the objection in writing and serve it on the lead authority within a period