STATUTORY INSTRUMENTS

2009 No. 445

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Quality Partnership Schemes (England) Regulations 2009

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The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 122 and 160(1)(b) and (c) of the Transport Act 2000(**a**).

The Secretary of State has consulted the Administrative Justice and Tribunals Council in accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(**b**).

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as The Quality Partnership Schemes (England) Regulations 2009 and come into force on 6th April 2009.

(2) These Regulations apply to England only(**c**).

Interpretation

2.—(1) In these Regulations—

"the Act" means the Transport Act 2000;

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

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

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

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

"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;

(**a**) 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.

(**b**) 2007 c. 15. The effect of paragraph 24(1) of Schedule 7 to this Act is that the power of the Secretary of State 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).

(**c**) For the reasons described in footnote (a), the power to make Regulations as respects Wales rests with the Welsh Ministers.

(**d**) 1981 c. 14.

(**e**) 1985 c. 67.

(**f**) The term "local transport authority" is defined in section 108(4) of the Transport Act 2000.

"traffic commissioner" means, except for the purposes of regulations 5 and 7—

(a) where the area to which the scheme, or proposed scheme, relates falls entirely within one traffic area, the traffic commissioner for that traffic area; or

(b) where the area to which the scheme, or proposed scheme, relates falls within two or more traffic areas, the traffic commissioner for the traffic area in which the lead authority's area is situated.

(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(**a**).

(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 England.

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.

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(**b**) or section 63(5) of the 1985 Act(**c**); and

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(**a**) 1971 c. 80.

(**b**) 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.

(**c**) 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.

(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(**a**), or

(b) is eligible under section 6(4) of the 1985 Act(**b**) 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—

(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).

(**a**) 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). 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.

(**b**) 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.

(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 of 28 days beginning with the day on which the notice given under section 115(1) of the Act in relation to that requirement is published.

(2) A copy of the objection made under paragraph (1) must, at the same time as the objection is served on the lead authority, be sent by the objector to the traffic commissioner.

(3) An objection made under paragraph (1) must contain—

(a) a statement describing the basis on which the objector considers that the objector is a relevant operator for the purposes of sections 114(6B) and 122(3)(c) of the Act;

(b) a statement describing the basis on which the objector considers that either or both of the grounds specified in regulation 7(3) is or are satisfied; and

(c) evidence to support the statements described in sub-paragraphs (a) and (b).

Request for further information by lead authority

9.—(1) Subject to paragraph (2) the lead authority may, within a period of 14 days beginning with the day on which an objection described in regulation 8 is received, request such further information or evidence from the objector as that authority considers necessary in order to reach a decision as to whether the objection is an admissible objection or the objector is a relevant operator.

(2) The lead authority may, with the written consent of the objector, extend the 14 day period specified in paragraph (1).

(3) If the lead authority requests information or evidence in accordance with paragraph (1) the authority must specify the period within which such information or evidence is to be submitted by the objector and that period must—

(a) be of sufficient length, taking into account the nature and complexity of the request, to provide the objector with a reasonable period within which to respond; and

(b) be not less than 14 days beginning with the day on which the request is issued by the authority.

(4) If the objector fails to respond to a request under paragraph (1) within the period specified in the request in accordance with paragraph (3) the lead authority may nevertheless proceed to make a decision under regulation 10.

Decision of lead authority

10.—(1) Subject to paragraph (2), within a period of 28 days beginning with the day on which an objection is received or, as the case may be, the end of the period within which such further information or evidence requested under regulation 9 must be submitted, the lead authority must make a decision as to whether—

(a) the objector is a relevant operator, and

(b) the objection is an admissible objection,

and issue a written notice to inform the objector of that decision.

(2) The lead authority may, with the written consent of the objector, extend the 28 day period specified in paragraph (1).

(3) Where the decision of the lead authority is that—

(a) the objector is a relevant operator, and

(b) the objection is an admissible objection,

the written notice issued in accordance with paragraph (1) must satisfy the requirement described in paragraph (4).

(4) The requirement is that the written notice must either—

(a) describe the modifications that the lead authority proposes to make to the standard of services to be specified in the scheme as a consequence of the decision; or

(b) describe when and in what manner the lead authority will issue a supplementary notice to inform the objector of the proposed modifications.

(5) The lead authority must send a copy of the written notice issued in accordance with paragraph (1) and, where appropriate, the supplementary notice issued in accordance with paragraph (4)(b) to the traffic commissioner.

Referral to the traffic commissioner

11.—(1) The objector may, within a period of 14 days beginning with the day on which the written notice is issued under regulation 10(1) or, where appropriate, the supplementary notice described in regulation 10(4)(b) is issued, refer either of the matters described in paragraph (2) to the traffic commissioner for a determination under regulation 14.

(2) The matters are—

(a) an objection to the decision of the lead authority under regulation 10(1) that an objector is not a relevant operator or that an objection is not an admissible objection; or

(b) an objection to the modified standard of services that the lead authority proposes to specify in the scheme as a consequence of a decision as described in regulation 10(3).

(3) When a matter is referred to the traffic commissioner in accordance with this regulation the objector must at the same time send to the traffic commissioner—

(a) a copy of the objection as submitted to the lead authority;

(b) a copy of any further information or evidence submitted to the lead authority in response to any request under regulation 9(1);

(c) where the matter is an objection described in paragraph (2)(a) a statement describing why, in the opinion of the objector, the decision of the lead authority made under regulation 10 is incorrect; and

(d) where the matter is an objection described in paragraph (2)(b) a statement describing why, in the opinion of the objector, either or both of the grounds specified in regulation 7(3) are satisfied in relation to the modified standard of services proposed to be specified in a scheme.

(4) The objector must, at the same time as submitting the information described in paragraph (3) to the traffic commissioner, submit a copy of that information to the lead authority.

Provision of information to traffic commissioner

12.—(1) Where a matter is referred to the traffic commissioner under regulation 11 for a determination the lead authority must, within a period of 14 days beginning with the day on which the information provided by virtue of regulation 11(4) is received, submit to the traffic commissioner—

(a) a statement describing the basis on which the decision under regulation 10 was taken; and

(b) any additional evidence or information which that authority considers to be relevant to the determination.

(2) The lead authority must, at the same time as it submits the statement described in paragraph (1)(a), send to the objector a copy of that statement and such additional evidence or information which the lead authority is submitting to the traffic commissioner in accordance with paragraph (1)(b).

(3) If the lead authority fails to submit the material described in paragraph (1)(a) and (b) within the period specified in that paragraph, the traffic commissioner may nevertheless proceed to make a determination under regulation 14.

(4) The traffic commissioner may, within a period of 14 days beginning with the end of the period for the submission of the material described in paragraph (1)(a) and (b), request such further information or evidence from the objector or the lead authority as the traffic commissioner considers necessary in order to make a determination.

(5) Where such information or evidence is requested in accordance with paragraph (4) the objector or, as the case may be, the lead authority must submit that information or evidence within a period of 14 days beginning with the day on which the request is received.

(6) The objector or, as the case may be, the lead authority must, at the same time as it submits any information or evidence requested under paragraph (4) to the traffic commissioner, send a copy of that information or evidence to the lead authority or, as the case may be, the objector.

(7) If the objector or, as the case may be, the lead authority fails to respond to a request under paragraph (4) within the period specified in paragraph (5) the traffic commissioner may nevertheless proceed to make a determination under regulation 14.

Assessors to assist traffic commissioners

13.—(1) This regulation applies where the traffic commissioner, in considering any matter referred under regulation 11, is required to determine whether the ground specified in regulation 7(3)(b) has been satisfied.

(2) In making such a determination the traffic commissioner may be assisted by an assessor selected from a panel of persons appointed by the Secretary of State for the purposes of section 17A of the 1981 Act(**a**).

(3) Where a traffic commissioner seeks the assistance of a person described in paragraph (2), the traffic commissioner must pay that person such remuneration as may be determined by the Secretary of State.

(**a**) Section 17A was inserted by section 5 of the Transport Act 1985.

Determination of the traffic commissioner

14.—(1) Within a period of 28 days beginning with the date of the later of the following—

(a) the end of the period for submission of the material described in regulation 12(1)(a) and (b), or

(b) the end of the period within which such further information or evidence requested under regulation 12(4) must be submitted,

the traffic commissioner must make a determination of the matter referred under regulation 11 and issue a written notice to the objector and the lead authority informing them of the determination.

(2) Where the determination of the traffic commissioner is that the objection should be upheld, the traffic commissioner may recommend to the lead authority such modifications to the requirements specified in the proposed scheme as to frequencies, timings or maximum fares as the traffic commissioner considers appropriate.

(3) Where the traffic commissioner makes recommendations to the lead authority in accordance with paragraph (2), and the authority either—

(a) modifies the scheme in accordance with those recommendations, or

(b) removes the requirement to which the admissible objection relates,

the objection is no longer an admissible objection for the purposes of section 114(6B) of the Act.

(4) Where either—

(a) the traffic commissioner does not make recommendations to the lead authority in relation to a determination described in paragraph (2), or

(b) the authority proposes modifications to the scheme which are different to those recommended by the traffic commissioner under paragraph (2),

paragraphs (5) to (9) apply.

(5) Where this paragraph applies the lead authority must, within a period of 28 days beginning with the day on which the determination made under paragraph (1) is received, send a written notice to the objector describing the modifications that the authority proposes to make to the standard of services to be specified in the scheme as a consequence of a determination described in paragraph (2).

(6) The lead authority may, with the written consent of the objector, extend the 28 day period specified in paragraph (5).

(7) If within a period of 14 days beginning with the day on which the notice under paragraph (5) is received the objector has not withdrawn the objection, the lead authority may refer the matter back to the traffic commissioner for a determination.

(8) Where any matter is referred back to the traffic commissioner by virtue of paragraph (7), the traffic commissioner must make a determination within a period of 14 days beginning with the date on which the matter is referred.

(9) Where the determination of the traffic commissioner in response to a referral under paragraph (7) is that the objection is not an admissible objection, the objection is no longer an admissible objection for the purposes of section 114(6B) of the Act.

Extension of time

15.—(1) Where the traffic commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly the traffic commissioner may, in accordance with paragraph (2), extend any of the periods described in paragraph (3).

(2) A period described in paragraph (3) may only be extended for such period as the traffic commissioner considers appropriate in the circumstances of the case.

(3) The periods are those specified in—

(a) regulation 11(1);

(b) regulation 12(1);

(c) regulation 12(4);

(d) regulation 12(5);

(e) regulation 14(1); and

(f) regulation 14(8).

PART 3

REVIEW OF REQUIREMENTS AS TO FREQUENCIES, TIMINGS OR MAXIMUM FARES

Interpretation of Part 3

16. For the purposes of this Part—

(a) a review is "completed" on the latest of the following dates—

(i) where an objection to the whole or any part of the outcome of the review has been submitted by virtue of regulation 25(2), the date on which that objection is finally determined,

(ii) the date on which the time for the submission of an objection under regulation 25(2) expires without any such objection having been made, or

(iii) the date on which an objection made in accordance with regulation 25(2) is abandoned or withdrawn,

and "objection" includes a reference to any further referral to a traffic commissioner for a determination under regulation 11, as applied by regulation 25;

(b) a request for a review of a requirement as to frequencies, timings or maximum fares is an "excepted request" if the lead authority is of the opinion that, since the relevant date, there has not been a change in market conditions which materially affects the ability of the operator or operators making the request, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services to the standard specified in the scheme;

(c) "existing services" means, in relation to a particular operator, all local services registered under section 6 of the 1985 Act in the name of that operator—

(i) which have one or more stopping places in the area to which the scheme relates; and

(ii) in respect of which, on the day on which the lead authority, without a request from a relevant participating operator, decides to start a review or, as the case may be, a request for a review is made by a relevant participating operator, the registration is extant;

(d) "maximum fares requirement period" has the meaning given in regulation 17(2);

(e) "participating operator" means, in relation to a particular scheme, an operator—

(i) who has given a written undertaking to the traffic commissioner in accordance with section 118(4)(a) of the Act in respect of that scheme; and

(ii) who is, at the relevant time, operating local services in accordance with the terms of that undertaking;

(f) "relevant date", in relation to a requirement as to frequencies, timings or maximum fares, means either—

(i) the date on which the requirement or, where a requirement as to maximum fares is varied in accordance with a formula, that formula was first introduced; or

(ii) where there has been a previous review of that requirement or formula, the date on which that review was completed;

(g) "relevant participating operator" means, in relation to any requirement as to frequencies, timings or maximum fares specified in a scheme, a participating operator to whom that requirement applies; and

(h) "review notice" means a notice issued by a lead authority to start a review of requirements as to frequencies, timings or maximum fares under these Regulations.

Review of requirements as to maximum fares by lead authority

17.—(1) Except where regulation 20 applies, where an authority or authorities make a scheme which specifies a standard of services which includes requirements as to the maximum fares that may be charged for particular journeys, of for journeys of particular descriptions, that scheme must specify a maximum fares requirement period in accordance with paragraphs (2) and (3).

(2) A maximum fares requirement period is, as the case may be, the period—

(a) between the date on which the requirements as to maximum fares first come into effect, and the latest date by which it is specified that the first review of those requirements must start; or

(b) between the completion of a review of the requirements as to maximum fares, and the latest date by which it is specified that the next review of those requirements must start.

(3) The maximum fares requirement period must be no greater than 12 months.

(4) Prior to the end of the maximum fares requirement period the lead authority must start a review by issuing a written review notice to participating operators to whom the requirements as to maximum fares apply.

(5) The review notice must propose—

(a) that requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, contained in the scheme, or any part of the scheme, should cease to have effect;

(b) that the existing maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, should continue to have effect until the next review; or

(c) revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

(6) Provided the lead authority issues a review notice prior to the end of the maximum fares requirement period, the existing requirements as to maximum fares contained in the scheme continue to have effect, unless paragraph (7) applies, until that authority makes a decision in accordance with regulation 24(2).

(7) Where the decision made in accordance with regulation 24(2) is that revised requirements as to maximum fares should be incorporated into the scheme, the existing requirements as to maximum fares contained in the scheme continue to have effect until such time as those revised requirements take effect in accordance with the timetable specified in accordance with regulation 24(5)(b).

(8) If the lead authority considers that either or both of the conditions in paragraph (9) are met in relation to some or all of the requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, it may, at any time prior to the end of the maximum fares requirement period, start a review of those requirements by issuing a written review notice to relevant participating operators.

(9) The conditions are that—

(a) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to maximum fares specified in the scheme; or

(b) the existing requirements are no longer consistent with the local transport policies(**a**) of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

Failure of lead authority to review requirements as to maximum fares

18.—(1) If a lead authority fails to issue a review notice before the end of the maximum fares requirement period, any participating operator to whom requirements as to maximum fares apply may request a review of the requirements.

(2) An operator who wishes to make a request under paragraph (1) must make the request in writing and serve it on the lead authority within a period of 28 days beginning with the day on which the maximum fares requirement period ends.

(3) A copy of the request made under paragraph (1) must, at the same time as the request is served on the lead authority, be sent to the traffic commissioner.

(4) If, within a period of 14 days beginning with the day on which a request made in accordance with paragraph (1) is received, the lead authority has not issued a review notice, any requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, cease to have effect.

(5) If a lead authority fails to issue a review notice before the end of the maximum fares requirement period, and no request is made under paragraph (1), any requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, remain in force until—

(a) revised requirements come into effect following a subsequent review, or

(b) the requirements cease to have effect following a subsequent review,

whichever is the earlier.

Request for review of requirements as to maximum fares by operator

19.—(1) At any time prior to the end of the maximum fares requirement period a review of any requirement or requirements as to maximum fares may be requested by—

(a) three or more relevant participating operators, or

(b) at least 50% of relevant participating operators,

(whichever is the lesser).

(2) Where a review is requested in accordance with paragraph (1) the operator or operators making the request must—

(a) specify to which requirement or requirements as to maximum fares the request relates;

(b) submit representations and evidence in support of the request; and

(c) propose revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

(3) Except where the request for a review is an excepted request the lead authority must, within a period of 28 days beginning with the day on which a request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

Review of formula for varying maximum fares by lead authority

20.—(1) This regulation applies where a scheme includes requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, and that

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(**a**) The term "local transport policies" is defined in section 108(5) of the Transport Act 2000, inserted by section 7(1) and (2) of the Local Transport Act 2008.

scheme includes a mechanism under which those maximum fares are varied at least every 12 months in accordance with a formula.

(2) If the lead authority considers that the conditions in paragraph (3) are met in relation to any or all of the requirements as to maximum fares that may be charged for particular journeys, or for journeys of a particular description, which are varied in accordance with a formula the lead authority may, at any time, start a review of that formula by issuing a written review notice to relevant participating operators in accordance with paragraph (4).

(3) The conditions are that—

(a) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to maximum fares specified in the scheme if the fares are varied in accordance with the formula; or

(b) the effect of the formula is no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

(4) The review notice must propose—

(a) that the requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, contained in the scheme, or any part of the scheme, should cease to have effect;

(b) one or more revisions to the formula referred to in paragraph (1); or

(c) replacing the formula with specified maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

Request for review of formula varying maximum fares by operators

21.—(1) At any time during a period in which a formula described in regulation 20(1) applies a review of the formula may be requested by—

(a) three or more relevant participating operators, or

(b) at least 50% of relevant participating operators,

(whichever is the lesser).

(2) Where a review of the formula is requested in accordance with paragraph (1), the operator or operators making that request must—

(a) specify to which part of the formula the request relates;

(b) submit representations and evidence in support of the request; and

(c) propose a revised formula for the variation of maximum fares.

(3) Except where paragraph (4) applies the lead authority must, within a period of 28 days beginning with the day on which the request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

(4) The obligation in paragraph (3) does not apply where the request submitted in accordance with paragraph (1)—

(a) is received less than 12 months after the relevant date; and

(b) is an excepted request.

Review of requirements as to frequencies or timings by lead authority

22.—(1) Where an authority or authorities make a scheme which specifies a standard of services which includes requirements as to the frequency or timing of services the lead authority may, if they consider that either or both of the conditions in paragraph (2) are met in relation to any or all of those requirements, start a review of those requirements by issuing a written review notice to relevant participating operators.

(2) The conditions are that—

(a) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to the frequency or timing of services specified in the scheme; or

(b) the existing requirements are no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

(3) The review notice must propose either—

(a) that the requirements as to the frequency or timing of services contained in the scheme, or any part of the scheme, should cease to have effect; or

(b) that those requirements should be revised.

Request for review of requirements as to frequencies and timings by operator

23.—(1) At any time a review of any requirement or requirements as to the frequency or timing of services may be requested by—

(a) three or more relevant participating operators, or

(b) at least 50% of relevant participating operators,

(whichever is the lesser).

(2) Where a review is requested in accordance with paragraph (1) the operator or operators making that request must—

(a) specify to which requirement or requirements as to the frequency or timing of services the request relates;

(b) submit representations and evidence in support of the request; and

(c) propose revised requirements as to frequencies and timings.

(3) Except where paragraph (4) applies the lead authority must, within a period of 28 days beginning with the day on which the request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

(4) The obligation in paragraph (3) does not apply where the request submitted in accordance with paragraph (1)—

(a) is received less than 12 months after the relevant date; and

(b) is an excepted request.

Procedure for reviews

24.—(1) A review notice must specify the last date for the receipt of representations from relevant participating operators in response to that notice, and that date must be—

(a) not less than 28 days, and

(b) not more than 42 days,

after the date on which the review notice is issued.

(2) The lead authority must, within a period of 35 days beginning with the date specified in the review notice in accordance with paragraph (1), decide whether the requirements as to frequencies, timings or maximum fares or, as the case may be, the formula used to vary maximum fares, should—

(a) continue to have effect until the next review,

(b) cease to have effect, or

(c) be revised.

(3) The lead authority must, once a decision is made by virtue of paragraph (2), issue a written notice to all relevant participating operators.

(4) The lead authority may, with the written consent of all of the relevant participating operators, extend the period specified in paragraph (2).

(5) Where the decision referred to in paragraph (2) is that the requirements as to frequencies, timings or maximum fares, or the formula used to vary maximum fares, should be revised, the notice issued under paragraph (3) must—

(a) set out the details of the proposed revisions; and

(b) subject to paragraph (6), set out the timetable for the proposed implementation of the revisions.

(6) The timetable specified in accordance with paragraph (5)(b) must—

(a) provide for any revision of requirements as to maximum fares, or the formula used to vary maximum fares, to take effect as soon as reasonably practicable after the review is completed;

(b) provide for any revision of requirements as to frequencies or timings to take effect as soon as reasonably practicable after the review is completed, taking into account the need for operators, as appropriate, to register a new local service, or vary or cancel the registration of an existing local service, in accordance with section 6 of the 1985 Act; and

(c) take into account, where the lead authority is aware that a relevant participating operator is party to a voluntary partnership agreement, as defined in section 153(2) of the Act, or any other agreement with operators of local services, any conditions which that agreement might contain restricting the implementation of changes to requirements as to frequencies, timings or maximum fares to particular dates or times in the year.

Objections to the outcome of a review

25.—(1) Revised requirements as to frequencies, timings or maximum fares (including any revision to a formula described in regulation 20(1)) may come into effect only if there are no admissible objections to the revised requirements from relevant participating operators.

(2) Where, following receipt of the notice described in regulation 24(3), a relevant participating operator wishes to submit an objection to the whole or any part of the outcome of the review, the procedures in regulations 8 to 15 apply as if the reference to a notice given under section 115(1) of the Act was a reference to a notice given under regulation 24(3).

Signed by authority of the
Secretary of State

Paul Clark
Parliamentary Under Secretary of State
Department for Transport

28th February 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about quality partnership schemes which include requirements as to frequencies, timings and maximum fares as a standard of services. A quality partnership scheme is a scheme made by a local transport authority, or two or more local transport authorities, under which the authority provides particular facilities at specific locations along the routes used by local bus services, and operators of local services who wish to use those facilities agree to provide services of a particular standard. Quality partnership schemes are made under Part 2 of the Transport Act 2000, as amended by the Local Transport Act 2008.

Part 1 of the Regulations contains general provisions. *Regulation 3* specifies that, where a scheme is to be made jointly by two or more authorities, one of those authorities must be identified as the lead authority for the purposes of these Regulations. This regulation also imposes obligations on a lead authority to consult and, where appropriate, act in accordance with the representations of the other authorities with whom the scheme is made. *Regulation 4* specifies that where a local bus service is operated under subsidy from the authority, and the effect of the subsidy agreement is that the service is provided to a standard proposed to be specified in a scheme, operators cannot object to the inclusion of that standard in the scheme.

Part 2 of the Regulations defines, for the purposes of sections 114(6B) and 122(3)(c) of the Transport Act 2000, the terms "admissible objection" and "relevant operator". It also prescribes the procedure to be followed by an operator who wishes to object to the inclusion of requirements as to frequencies, timings or maximum fares in a scheme. To be admissible an objection must be submitted by a relevant operator in accordance with the prescribed procedure, and must satisfy either or both of the grounds specified in *regulation 7(3)*. These are that it would either not be practicable, or it would not be commercially viable, for an operator to provide services to the standard specified. An objection must be submitted to the lead authority for a decision and, if the objector is unhappy with that decision, the matter may be referred to the traffic commissioner for a determination.

Part 3 of the Regulations prescribes the procedure under which requirements as to frequencies, timings and maximum fares may be reviewed. Where a scheme contains requirements as to maximum fares, these must be reviewed at least every 12 months. No maximum period between reviews is prescribed for requirements as to frequencies and timings and it is for authorities to decide when they should take place. Where a prescribed number of operators request a review of the requirements which apply to them, the authority is generally under an obligation to carry out such a review. This obligation does not apply where it is less than 12 months since the previous review of those requirements, unless there has been a change in market conditions which materially affects the ability of the operator to secure an appropriate rate of return from operating the existing services. Following a review, operators may object to the outcome of that review, following the procedures in Part 2 of these Regulations.

An impact assessment has been prepared and copies can be obtained from the Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR. The assessment is annexed to the Explanatory Memorandum which can be found alongside the instrument on the Office of Public Sector Information website (www.opsi.gov.uk).

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