

2011 No. 1121

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Mandatory Travel Concession (England) Regulations 2011

Made - - - - *13th April 2011*

Laid before Parliament *18th April 2011*

Coming into force - - *12th May 2011*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 149(3), 150(6), (7) and 160(1) of the Transport Act 2000(a):

Part 1

General

Citation, commencement and cessation

1.—(1) These Regulations may be cited as the Mandatory Travel Concession (England) Regulations 2011.

(2) They come into force on 12th May 2011.

(3) They cease to have effect on 12th May 2018.

Review

2.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

(a) 2000 c.38.

Interpretation

3.—(1) In these Regulations—

- (a) “the Act” means the Transport Act 2000;
- (b) “applicant” means a person making an application to which Part 5 of these Regulations applies;
- (c) “average commercial adult fare” means the average fare paid by adult non-concessionary passengers on any particular route or service of an operator;
- (d) “commercial ticket sales” means the number of tickets of any given ticket type sold by an operator to fare paying passengers on any route or service on which the concession is available;
- (e) “commercial ticket revenue” means the revenue received by an operator from its commercial ticket sales on any route or service on which the concession is available;
- (f) “concession” means any travel concession provided or to be provided in accordance with section 145A(1)(a) of the Act;
- (g) “concessionary journeys” means the total number of eligible journeys(b) made on eligible services(c) by persons entitled to receive a concession;
- (h) “operator” means an operator of an eligible service on which a concession is claimed;
- (i) “payment day” means any day on which a reimbursement payment is due to be made;
- (j) “payment period” means the period to which a reimbursement payment relates;
- (k) “reimbursement arrangements” include the method of determination and manner of payment of reimbursement by travel concession authorities to operators in respect of concessions to be provided;
- (l) “reimbursement payment” means any payment falling to be made in accordance with section 149(d) of the Act;
- (m) “standard method” means the method for calculating the amount of reimbursement payments due to operators of eligible services adopted by a travel concession authority in accordance with regulation 9(1).

(2) References in these Regulations to the date on which a notice is given are, in relation to notices sent by post, references to the date on which the notice is, in accordance with regulation 20(3), deemed to be received at the address to which it is sent.

(3) Any reference in these Regulations to estimates or calculations made by a travel concession authority in relation to reimbursement payments is a reference to estimates or calculations made by the best practical method available to the travel concession authority.

Application

4. These Regulations relate to the concession established under section 145A of the Act and apply in relation to England.

(a) Section 145A(1) of the Act was substituted by section 1 of the Concessionary Bus Travel Act 2007 (2007 c.13).
(b) The term “eligible journey” is defined in section 145A(2) of the Transport Act 2000.
(c) The term “eligible service” is defined in section 146 of the Transport Act 2000.
(d) Section 149(1) of the Act was substituted by section 3(1) and (2) of the Concessionary Bus Travel Act 2007. Section 149(2)(a)(i) and (ii) were substituted by Section 3(1) and (3) of the Concessionary Bus Travel Act 2007.

Part 2

Arrangements between Operators and Travel Concession Authorities

Reimbursement arrangements

5. Regulations 6 to 17 apply to the provisions to be included in reimbursement arrangements.
6. It must be an objective of a travel concession authority when formulating reimbursement arrangements for an operator to provide that such operator—
- (a) is financially no better and no worse off as a result of providing a concession; and
 - (b) receives appropriate reimbursement for providing concessions to the persons eligible to receive those concessions.
- 7.—(1) The payment periods and payment days must be specified in the reimbursement arrangements and—
- (a) payment periods must not be longer than three months; and
 - (b) in relation to each payment period, the payment day must not be later than the day which is half way between the first and last days of the payment period (and, in ascertaining the payment day, no account is to be taken of half days).
- (2) Each initial reimbursement in respect of a payment period must not be less than 85% of the amount estimated by the travel concession authority to be due to the operator in respect of the relevant payment period.
- (3) The balance of each reimbursement in respect of a payment period must be paid, subject to any adjustments shown to be necessary in the light of information available to the travel concession authority pursuant to arrangements giving effect to these Regulations, not later than three months after the end of the relevant payment period.
- (4) Subject to paragraph (5), if any such balance as is mentioned in paragraph (3) is not paid in accordance with that paragraph, provision must be made for the travel concession authority to pay interest (at a rate not less than the lowest rate at which the travel concession authority is able to borrow at the time) on the amount for the time being unpaid for the period beginning with the last date on which the balance should have been paid in accordance with paragraph (3) and ending with the date of actual payment.
- (5) Interest is not to be payable until a reimbursement arrangement has been in operation for six months nor in respect of any period falling wholly or partly within the first six months of operation of a reimbursement arrangement.
- (6) If the amount of any reimbursement payment made in accordance with paragraph (2) in respect of any payment period exceeds the total amount of that payment found to be payable in respect of that period, provision must be made for the travel concession authority to notify the operator in writing accordingly and deduct the amount of the excess from the reimbursement payments due to that operator in respect of any subsequent payment period.
- (7) If the circumstances described in paragraph (6) arise in relation to a person who is no longer an operator, the travel concession authority must notify that person accordingly and, unless that person disputes the existence or amount of the excess, that person must pay the amount of the excess to the travel concession authority within 30 days of the date of receipt of the notification.
- (8) Provision may be made for any reimbursement payment due in accordance with paragraphs (2) and (3) to be made otherwise than in accordance with this regulation in any case where an operator fails to supply information in accordance with reimbursement arrangements giving effect to these Regulations—
- (a) in the case of a payment due in accordance with paragraph (2), in sufficient time to allow the travel concession authority to form a reasonable estimate of the amount of the payment; or
 - (b) in the case of a payment due in accordance with paragraph (3), in sufficient time to allow the travel concession authority to calculate the amount of the payment.

8. Subject to regulation 13, when formulating reimbursement arrangements, a travel concession authority may request information from operators which it reasonably considers relevant to assisting it in the formulation and operation of those arrangements, including—

- (a) commercial ticket sales;
- (b) commercial ticket revenue;
- (c) concessionary journeys; and
- (d) average commercial adult fare.

9.—(1) Subject to paragraph (4), in relation to each reimbursement arrangement, the travel concession authority must adopt a standard method to be used.

(2) The standard method must provide for the travel concession authority to take into account any data supplied by an operator who shows that the method by which such data was derived is more appropriate for the calculation of reimbursement payments.

(3) Where the amounts of reimbursement payments are estimated or calculated otherwise than by reference to a standard method, the estimates or calculations must be adjusted if the information upon which they were based is shown to be inaccurate in any material respect.

(4) A travel concession authority that has reason to believe that the standard method used by it is inappropriate in relation to the reimbursement of any particular operator may, at its own cost and expense, make provision for a more accurate calculation of the reimbursement in respect of that operator.

10. Provision must be made for a travel concession authority to review the calculations made in accordance with the standard method at least once in each period of 12 months that the relevant reimbursement arrangement is in operation.

11.—(1) Provision must be made for additional reimbursement payments in any case where the operator demonstrates to the travel concession authority—

- (a) that that operator has necessarily incurred costs in providing services on which concessions are available in order to meet the extra demand created by the availability of those concessions additional to those costs that had been taken into account in the standard method; and
- (b) that those costs are such that they will not be met by reimbursement payments made in accordance with the standard method during the year in which the costs are incurred or during the three months immediately following the end of that year.

(2) Provision must be made for additional reimbursement payments in any case where the operator demonstrates to the travel concession authority—

- (a) that the operator has supplied any information required in accordance with reimbursement arrangements; and
- (b) that in doing so it has incurred expenditure which it would not otherwise have incurred.

12. Any information supplied by an operator to a travel concession authority pursuant to regulation 8 or to reimbursement arrangements must only be used for and in connection with the calculation of reimbursement payments and such information must not be disclosed by the travel concession authority except—

- (a) with the consent in writing of the operator; or
- (b) to the extent to which the information in question has become public knowledge otherwise than by the act or omission of the travel concession authority.

13. Information may not be required on any of the following subjects—

- (a) the cost to the operator of providing any service or services on which concessions are available;
- (b) the total turnover of the business, or of any part of the business, of an operator; and
- (c) the annual rate or amount of the profit or loss of that business, or of any part of it.

14. A travel concession authority may require an operator to allow the officers, servants or agents of that travel concession authority to have access with reasonable frequency to (including the right to travel free of charge on) the vehicles of the operator on which concessions are available for the purpose of—

- (a) surveying or counting or estimating the number of passengers (whether generally or of any particular description) and the fares paid by those passengers; and
- (b) obtaining information on other matters relating to the journeys made by passengers who are eligible to receive concessions and necessary to the calculation by the travel concession authority of reimbursement payments.

Change in services and fares

15. Provision may be made for an operator to inform the travel concession authority of any changes in the services of that operator on which concessions are available, and of any changes in the fares payable by passengers on those services, in either case not later than the day on which the change takes effect.

Employment of administering agents

16. A travel concession authority may not employ as its agent for the purposes of the administration of reimbursement arrangements any person who is a holder of a PSV operator's licence(a).

General restriction on interference with the manner of providing services

17. Except where done to give effect to this Part, reimbursement arrangements may not include provisions compliance with which would require the operator to alter the manner in which that operator provides the services on which concessions are available.

Part 3

Notices

Content of Notices

18. Notices under section 150(4) of the Act must contain the particulars set out in Schedule 1.

19. Notices under section 150(5) of the Act must contain the particulars set out in Schedule 2.

Service of notices

20.—(1) Notices required to be given under sections 150(4) and 150(5) of the Act must be—

- (a) delivered by hand;
- (b) sent by prepaid registered or recorded delivery post;
- (c) transmitted, subject to paragraph (2), in electronic format to the proper address of the intended recipient; or
- (d) given by any other means as may be agreed in writing between the person giving notice and the intended recipient.

(2) Written notice may be transmitted in electronic format only where the intended recipient—

(a) The term "PSV operator's licence" means a PSV operator's licence issued under Part 2 of the Public Passenger Vehicles Act 1981 (1981 c.14)(see section 82(1) of that Act and section 162(2) of the Transport Act 2000).

- (a) has indicated to the person giving notice, and has not subsequently withdrawn the indication, that receipt of notices in electronic format will be accepted; and
 - (b) has provided the person giving notice with the fax number, e-mail address or other electronic address to which such notices may be sent.
- (3) Any notice sent by post in accordance with paragraph (1)(b) is to be deemed to be received when it ought in due course of post to be delivered at the address to which it is sent.

Part 4

Periods of Notice

Prescribed notice period

21. For the purposes of section 150(5) of the Act, the period for giving prior notice of intention to apply to the Secretary of State must not be less than seven days.

Part 5

Applications to the Secretary of State

Application

22. Regulations 23 to 32 apply to applications to the Secretary of State under section 150(3) of the Act for the modification of reimbursement arrangements.

Written Statements

23.—(1) The applicant must, with the notice required to be given under section 150(4) of the Act, submit to the Secretary of State a written statement of—

- (a) the grounds for the application; and
- (b) any reasons or other matters which that person considers to be relevant to the application.

(2) The applicant must, at the same time as submitting the notice and statement to the Secretary of State, send a copy of that notice and of that statement to the travel concession authority.

24.—(1) The Secretary of State may request from the travel concession authority a written statement of any matters which it considers to be relevant to the application.

(2) Subject to regulation 30, the travel concession authority must within 28 days of it having received a request under paragraph (1) submit the written statement to the Secretary of State.

(3) At the same time as it submits the written statement to the Secretary of State, the travel concession authority must send a copy of it to the applicant.

25.—(1) Subject to regulation 30, the Secretary of State may, after the travel concession authority has submitted its written statement, request the applicant or the travel concession authority, or both of them, to submit to the Secretary of State such further written statements and documents as the Secretary of State may direct.

(2) Any such further statements and documents must be submitted within such time as the Secretary of State may direct, but such time must not, unless the applicant and the travel concession authority otherwise agree, be less than 14 days commencing with the date of the Secretary of State's request.

(3) The applicant or the travel concession authority (as the case may be) submitting any further statement or document to the Secretary of State must at the same time send a copy of it to (as appropriate) the travel concession authority or the applicant.

Hearings and Procedure

26.—(1) The Secretary of State may, after the submission of the last written statement or document required under regulations 23 to 25, invite the applicant or the travel concession authority to appear before the Secretary of State.

(2) When the Secretary of State makes an invitation under paragraph (1), the Secretary of State must also invite the applicant or the travel concession authority not invited under that subparagraph to be present.

(3) The hearing pursuant to an invitation from the Secretary of State under this regulation must take place not less than 14 days after the date of that invitation (or, if invitations were given on separate dates, the date of the last of those invitations).

(4) The applicant may appear in person or be represented by counsel, solicitor or any other person.

(5) A travel concession authority may appear by any officer appointed for that purpose, or be represented by counsel, solicitor or any other person.

27. If the applicant or the travel concession authority fails—

- (a) to submit any statement or documents within the time specified by the Secretary of State; or
- (b) to appear before the Secretary of State in response to an invitation from the Secretary of State,

the Secretary of State may nevertheless proceed with the determination of the application.

28.—(1) Subject to regulation 27, at any hearing the Secretary of State must give to the applicant and the travel concession authority an opportunity—

- (a) to address the Secretary of State and to amplify the written statement submitted under this Part, to give evidence, to call witnesses, and to put questions to any person giving evidence before the Secretary of State; and
- (b) to make representations on the evidence (if any) and on the subject matter of the application generally but, where evidence is taken, such opportunity is not to be given before the completion of the taking of the evidence.

(2) The Secretary of State may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law.

(3) Except as otherwise provided in this Part, the procedure at any hearing is to be determined at the discretion of the Secretary of State.

29.—(1) The decision of the Secretary of State, including any decision to increase, decrease or leave unchanged the amount to be paid to an applicant by way of reimbursement, must be recorded in a document signed by or on behalf of the Secretary of State and dated when so signed.

(2) Such document must contain a summary of the reasons for the decision of the Secretary of State.

(3) A copy of the document recording the decision of the Secretary of State must be sent to the applicant and the travel concession authority.

(4) Except where a decision has been announced at the conclusion of a hearing, the decision is to be treated as having been made on the date on which the copy of the document is sent to the applicant.

30.—(1) In this regulation a reference to a “third party” is a reference to a person who is or was an operator but is not the person making the application in question.

(2) Any statement or document submitted by a travel concession authority, and any statement made on behalf of a travel concession authority appearing before the Secretary of State, must not contain any information relating to the reimbursement of a third party where that information was received by the authority from that third party pursuant to reimbursement arrangements.

(3) Paragraph (2) does not apply where the third party has given consent in writing to the inclusion of the information.

31. When the Secretary of State determines an application, the Secretary of State may, after giving them an opportunity to make representations, require the applicant or the travel concession authority, or both of them, to pay such a sum as the Secretary of State may determine towards the expenses incurred by the Secretary of State in connection with the determination of the application.

32.—(1) If the Secretary of State appoints a person to determine an application on behalf of the Secretary of State, the Secretary of State must give notice in writing of the appointment to the applicant and the travel concession authority.

(2) If the Secretary of State appoints a person to determine an application on behalf of the Secretary of State, references in regulations 23 to 30 to the Secretary of State must be read, with effect from the date of the appointment, as references to the person so appointed.

Signed by authority of the Secretary of State

13th April 2011

Norman Baker
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 18

Particulars to be contained in notices given under section 150(4) of the Act

1. The date on which the notice is given.
2. A statement giving the date on which notice was given to the travel concession authority under section 150(5) of the Act together with a copy of that notice.
3. A statement giving the date on which the proposed reimbursement arrangements or proposed variation to the reimbursement arrangements was published by the travel concession authority.
4. A statement giving the date on which the proposed reimbursement arrangements (or proposed variation to the reimbursement arrangements) come into operation.
5. As applicable, a copy of the proposed reimbursement arrangements, or proposed variation to the reimbursement arrangements, published by the travel concession authority.
6. The provision of the Act under which the notice is given.
7. A statement giving the grounds of the operator for making the application.
8. If those grounds include a financial loss, an estimate of that loss.

SCHEDULE 2

Regulation 19

Particulars to be contained in notices given under section 150(5) of the Act

1. The name and address of the operator of the service or services to which the notice refers.
2. The name and address of the travel concession authority.
3. The provision of the Act under which the notice is given.
4. The details of each of the services to which the notice refers including—
 - (a) the origin and terminal points; and
 - (b) a description of the route or routes by reference to the principal places served.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the reimbursement arrangements between travel concession authorities and operators of public passenger transport services providing concessions under section 145A of the Transport Act 2000.

Part 1 contains general provisions. Regulation 1(3) provides that these Regulations are to cease to have effect seven years after their coming into force. Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation 1(3) provides, be revoked early, or be maintained in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.

Part 2 (Regulations 5 to 17) deals with reimbursement arrangements. Regulations 6 to 17 apply to the provisions to be included in reimbursement arrangements with respect to the concession provided by operators.

Part 3 (Regulations 18, 19 and 20) and Schedules 1 and 2 make provision for the content and manner of service of notices in connection with applications by operators to the Secretary of State regarding modification or variation of arrangements proposed by a travel concession authority.

Part 4 (Regulation 21) prescribes the period for the service of notice by the operator in advance of making an application to the Secretary of State.

Part 5 (Regulations 22 to 32) prescribes the procedure to be followed in connection with applications by operators to the Secretary of State regarding modification of the reimbursement arrangements proposed by a travel concession authority.

An impact assessment of the effect that this instrument is to have on the costs of the private, public and voluntary sectors is available from the Buses and Concessionary Travel division of the Department for Transport, zone 3/17 Great Minster House, 76 Marsham Street, London SW1P 4DR and is annexed to the Explanatory Memorandum that is available alongside the instrument on the website. www.legislation.gov.uk. A copy of the assessment has been placed in the library of each House of Parliament.