CONCESSIONARY FARES SCHEMES

EXPLANATORY NOTES ON THE PROVISIONS OF THE TRANSPORT ACT 1985

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Introduction

The provision of concessionary fares under the Transport Act 1985

1. The Transport Act 1985 sets out new provisions relating to travel concessions on public passenger transport services. They replace the powers which authorities have hitherto possessed under the Travel Concessions Acts 1955 and 1964 and the Transport Act 1968. Such replacement is necessary in order to provide for the new situation created by the abolition of road service licensing. The object of these provisions is to give all operators of eligible services, that is registered local services qualifying for fuel duty grant, a right to participate in any concessionary fares scheme established for an area in which they run services, and to give authorities the powers they need to require operators of such services to participate in a scheme if they are unwilling to do so on a voluntary basis. These provisions cover not only conventional local bus services but services operated by taxis and other vehicles where they are run as registered local services. The Act gives authorities the power to provide concessions on other forms of public passenger transport service if they wish, and if they are able to reach agreement with the operators, but rights of participation and powers of compulsion relate only to registered local services.

2. In order to safeguard the right of operators to participate and receive reimbursement on equal terms for the concessions they provide and to ensure the ability of authorities to exercise compulsory powers when they believe them to be necessary, the Act and Regulations made under it contain detailed provisions as to the rights and obligations of both parties. The purpose of these Notes is to explain these provisions, as a guide to the operation of schemes for authorities and operators.

3. The Government appreciates that the requirements of the new legislation may appear complex. But if authorities were to formalise the procedures they have followed in the past in administering their concessionary fares schemes they would find many similarities with the procedures described in these Notes. Some degree of formality is necessary to ensure that operators can exercise their right to participate effectively, and that authorities only use their powers of compulsion where the terms of participation are fair and reasonable. Consequently regulations safeguard the manner in which reimbursement to operators should be calculated and paid. The Government believes that it should in most cases be possible for authorities to provide concessions by way of agreement with operators, and that the procedures to be followed in determining levels of reimbursement, whilst needing to be tightened up in some respects to comply with the regulations will in many cases be largely a restatement of the procedures already adopted for existing schemes.

4. The objective of the new legislation is to ensure that authorities are able to continue to provide concessions at whatever level they believe appropriate (e.g. free travel, half-fares or a particular value of tokens) and by whatever means—either through the use of passes or by the issue of vouchers or tokens. Although some authorities may need to alter their procedures there is no reason why an authority should find it necessary to change from one method to another as a result of the legislation. An authority which are generally satisfied with a pass-based scheme should be able to retain that system and still meet budgeting targets. Similarly an authority using tokens will be able to retain that system.

The purpose of these Notes

5. These Notes summarise the main provisions of the legislation, and set them out in a way which shows what an authority need to do to establish a travel concession scheme which complies with the Act. They will also be of assistance to operators who wish to gain a comprehensive picture of how the legislation works. Their coverage is, however, of a general character, and they do not attempt to give a precise statement of the law. Anyone wishing to establish the exact position on a particular point should consult the legislation itself, namely sections 93 to 105 of the Transport Act 1985 (Ch 67), and The Travel Concession Schemes Regulations 1986 (SI 1986 No. 77). Two circulars have also been issued by the Departments responsible for this legislation (the Department of Transport, the Scottish Development Department and the Welsh Office) which may be found helpful in understanding the effect of the legislation. Circular DTp 3/85 (SDD 32/85, WO 64/85) describes the provisions of the Act; paragraphs 106-130 deal specifically with concessionary fares. Circular DTp 1/86 (SDD 5/86, WO 12/86) describes the provisions of the Regulations, and provides guidance on how the Secretaries of State believe certain issues should be handled. Copies of all these publications are available from HMSO or its agents.

1. Requirements for Establishing a Scheme

Authorities which can establish a scheme

1. The authorities which have the power to establish concessionary fares schemes under the Act are county and district councils and metropolitan county passenger transport authorities in England and Wales and regional and islands councils in Scotland. Authorities may if they wish come together to establish a joint scheme. In cases where a passenger transport authority or county council establish a scheme covering their area as a whole, metropolitan district or district councils retain the power to make their own supplementary provision if they wish. The authority or authorities responsible for the administration of a scheme will be the same as the authority or authorities which establish it, except in the passenger transport areas in England, where the Passenger Transport Authority establish the scheme but the Passenger Transport Executive administer it.

Joint schemes

2. An authority which establish their own scheme will have full control over the level and type of concessions provided and the way in which the scheme is administered. However, many authorities have found it advantageous to develop joint schemes. There are also a number of particularly successful schemes which are funded jointly by a county council and the constituent district councils on a county-wide basis. Such arrangements have much to commend them in that they provide uniform concessions over a wider area, and they should be able to continue with little, if any, change. In a similar way, a consortium of district councils may continue joint schemes covering their combined areas. In the case of a joint scheme the authorities involved bear the responsibility jointly and severally.

Eligibility for concessions

3. Section 93 (7) of the Act lists the groups of people for whom concessions may be provided under the Act. These are:

(a) men over the age of 65 and women over the age of 60;

(b) persons whose age does not exceed 16 years;

(c) persons whose age exceeds 16 years but does not exceed 18 years and who are undergoing full-time education;

(d) people suffering from a degree of blindness which makes them unable to perform any work for which sight is essential;

(e) people suffering from any disability or injury which, in the opinion of the authority, seriously impairs their ability to walk;

(f) other classes of persons specified by order by the Secretary of State. (An order specifying these categories is to be made during 1986.)

The definitions at (b) and (c) use phraseology already contained in existing legislation and are taken to include anyone who has not reached their next (i.e. 17th or 19th) birthday.

4. Authorities may decide to provide concessions for all or any of these groups. It would also be possible for them if they wished to restrict coverage to a smaller group within one of these overall categories, for example children up to 15 years.

5. Social services authorities in England and Wales retain their separate powers to provide assistance with travelling expenses for certain groups of people under section 29 of the National Assistance Act 1948. Advice on these provisions was previously contained in DHSS Circular 13/74 which is to be amended to take account of the new legislation. Regional and islands councils in Scotland have similar powers under the Concessionary Travel for Handicapped Persons (Scotland) Act 1980.

The type of concessions to be provided

6. Authorities have complete freedom of choice as to the type of concessions to be provided, within the

constraints set by the availability of resources. Such concessions might – for example – take the form of:

- free travel;
- a percentage reduction on fares (e.g. half fare travel);
- a flat fare;
- a flat reduction on fares; or
- an issue of tokens or travel vouchers.

It will also be open to them to decide in the light of the resources available whether concessions should be available at all times, or whether they should be limited for example to off-peak periods or specified days of the week. Different times might be specified for different types of passenger. An authority may not for example wish to give concessions for children late in the evening but only at times necessary for travel to and from school. However, whatever concessions are given, authorities will wish to ensure that they can be easily understood and administered.

The area to be covered

7. The Act provides that concessions may be made available on journeys between places in the **principal area** covered by the scheme, between that area and places outside but in the vicinity of it and between places which are outside but within the vicinity of the principal area.

8. The **"principal area"** will normally be the area of the authority that have established the scheme, or in the case of a joint scheme, the area of all the authorities involved. The Act does however allow an authority to designate a "principal area" which is smaller than their area as a whole, if they so wish, and authorities may wish to take advantage of this option in certain circumstances. It could for example be used to provide concessions on journeys to a particular isolated school or hospital, or in an area where there is a higher than average concentration of elderly people. It could also be used to exclude certain districts from a county or regional scheme. It should be noted, however, that it is not possible to use this power to limit concessions to particular services run by specific operators. It would be necessary to designate a particular limited area as the principal area and all operators running registered local services in that area would then have the right to participate in the scheme (see paragraph 12 below).

9. Authorities may wish to discuss any provision which they propose to make for concessions on services operating outside their area with their neighbouring authorities who may have their own concessionary fare schemes. Such provision may for example be appropriate if there is a location such as a market town, shopping centre or hospital outside but close to the principal area. The distance involved will vary in different circumstances. Such a centre is for example likely to be further away in the case of an isolated rural area than it would be in a dense urban area.

The services on which concessions may be provided

10. Authorities may at their discretion provide concessions on any form of public passenger transport service. "Public passenger transport services" are defined in Section 63 (10) (a) of the Act as meaning:

> "all those services on which members of the public rely for getting from place to place, when not relying on private facilities of their own, including school transport but not:
>
> > services provided under permits under section 19 of this Act (i.e. minibus services provided by voluntary and educational groups) other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled ; or
> >
> > ii. excursions or tours".

11 It would therefore be possible for authorities to provide concessions at their discretion on, for example:

- registered local services;
- rail services and non local bus services, insofar as they meet the local transport needs of the principal area;
- taxis;

- in Tyne and Wear, the Metro;
- social car schemes;
- any services specially designed to meet the needs of elderly or disabled people;
- ferries; or
- inter-island air services in Scotland.

The right of participation

12. Although authorities have discretionary powers to provide concessions on all these services, operators who run or intend to run "eligible" services (defined in section 94 (4) as services qualifying for fuel duty grant) have a right to participate in any concessionary fares scheme applying to the area in which the service operates or is intended to operate. The definition of eligible services would include taxis but only if they were operating as a registered local service. It could also include services such as post buses. The powers which authorities have to require operators to join a concessionary fares scheme are limited to the same group of operators – see Chapter 4.

Exceptions to the right of participation

13. There are exceptions to the right of participation in cases where:

(a) the authority makes a successful application to the Secretary of State; or

(b) a service includes a special amenity element.

Applications to the Secretary of State for exemption

14. The authority responsible for the administration of a scheme may apply to the Secretary of State to be exempted from the duty to admit a particular service or description of services to participation in the scheme; if the administering authority are a PTE they must first obtain the consent of the PTA. This provision is intended to allow for the exclusion of services which are not part of the normal pattern of local public transport and do not meet a genuine local need for public transport – such as, for example sightseeing services, some services to airports or ferry terminals intended primarily for use by long distance travellers, or services running to specific centres of entertainment. The Secretary of State has made it clear that he will be prepared to exercise his power to grant exemptions in this way only sparingly and in exceptional circumstances. He would consult the operator before reaching his decision, and would have the power to remove or vary an exemption at any time if circumstances changed.

Services with a special amenity element

15. If premium fares are to be charged on a service provided by an operator seeking admission to the scheme–that is the fares include a special amenity element in that they are significantly high in relation to the general level of fares for comparable journeys in their area–then the authority may make admission conditional on the operator being prepared to accept a modification in the level of reimbursement calculated under the standard method so far as that service is concerned. Reimbursement would then be related to the general level of fares for comparable journeys in the area rather than the actual fares on the service in question. The requirement that premium fares must reflect a special amenity element would prevent an authority from using this provision in cases where high fares simply resulted from the length of the journey or the nature of the area served. They might, however, feel it appropriate to apply this provision in the case, for example, of a limited stop commuter service offering special on board facilities for passengers or a service to a place of entertainment where the fare includes an element for admission to the facility. The authority could also apply this provision to a service which was already participating in the scheme, but only if they give the operator 42 days notice of their intention to change the basis for reimbursement to bring it into line with that normal for the general level of fares in the area.

Procedure for admission to the scheme

16. Once a scheme is established it could be important that authorities should be able to control dates of entry to it so as to be able to regulate the arrangements for reimbursement and if necessary limit their

financial obligations for payment at any one time. This will also make it easier for them to plan their spending over the year. Section 93 (3) (b) therefore requires an authority to prescribe **standard admission dates** on which operators may be admitted to the scheme. Under the Regulations the maximum period which may be required to elapse between such dates is three months. It will be for authorities to choose what interval should be required between admission dates, within this maximum, and in doing so they will wish to balance the effect of new entrants on the reimbursement arrangements with the objective of maintaining a full coverage of concessions on services in their area. They will note that the arrangements for reimbursement, as set out in Chapter 3, allow payment to an operator for a new service to be calculated on an ad hoc basis for up to three months, and may therefore feel that the period between admission dates can be shorter than the maximum of three months.

17. An operator who wishes to exercise his right of participation can be required, by the terms of the scheme, to give a period of notice to be specified by the authority. Under the Regulations this must be no longer than 28 days. The operator would then be entitled to participate as from the next standard admission date following the expiry of that period of notice.

Procedure for withdrawal

18. Authorities may if they wish include in the arrangements for the scheme a requirement that any operator who is participating on a voluntary basis (either after exercising his right of participation or simply following an agreement with the authority) shall give them notice if he intends to withdraw from it. The period of notice required must be specified in the arrangements for the scheme and, under the Regulations, must be no more than 42 days. During this period of notice, an operator is, in effect, under a short term form of compulsory participation, and must continue to provide the concession. If an authority wish to change their scheme, or the reimbursement arrangements, they must give an operator to whom any such period of notice applies at least 28 days prior warning of the change; if he indicates that he is not willing to accept the changes, his participation in the scheme automatically terminates on the date on which the change took effect.

19. The period of 42 days notice which an operator can be required to give if he decides of his own accord that he wishes to leave the scheme will give the authority an opportunity to decide whether they wish to use their compulsory powers to require him to remain in it by serving a participation notice on him. If they do decide to do this, then it should normally be possible to avoid any break in the availability of concessions on the service in question, but the operator will have the right to apply to the Secretary of State for release from the requirement to participate and, if his application is successful, he will be entitled to compensation from the authority for the period during which he was subject to it (see Chapter 4 on compulsory participation).

2 Establishing a Scheme

Transitional arrangements

1. Arrangements made for the provision of concessionary fares under the Travel Concessions Acts 1955 and 1964 and Section 138 of the Transport Act 1968 will continue in force until Deregulation Day (26 October 1986), on which date those provisions will be repealed. It is anticipated that the transfer of bus undertakings from District Councils to public transport companies established under Section 67 of the Transport Act 1985 will have been completed by that date, but if in any particular case this could not be achieved, the powers under the 1955 and 1964 Acts would be retained until the transfer had been made.

Introduction of schemes under the 1985 Act

2. It will be normal to bring schemes made under the new powers conferred by the Act into force as from Deregulation Day. It will, however, be possible to establish details of them, ready for commencement on 26 October 1986, at any time now that the relevant provisions of the Act have been brought into force. Authorities who wish to have a scheme in force as from the date of deregulation are urged to publish details of the arrangements as early as possible.

Exercise of compulsory powers in the period following deregulation

3. It is particularly important to remember that authorities which wish to be able to exercise compulsory powers in the period immediately following deregulation are required to publish details of the scheme and the arrangements for reimbursement by 8 April 1986. An authority which have not published these details by that date will not be able to exercise powers of compulsion until 1 April 1987.

4. If an authority have published the necessary details by 8 April 1986 they will be able to serve a participation notice (see Chapter 4 on the use of compulsory powers) at any time after that date, to take effect from 26 October 1986. It would of course be necessary to give a minimum notice of at least 28 days before any notice took effect. If authorities do feel that they need to make use of these powers, there would be advantages in serving any participation notices as early as possible, so that any applications made by operators to the Secretary of State could be considered and wherever possible determined before the date of deregulation.

Discussion with operators

5. Authorities will, however, no doubt wish to discuss details of their proposals with operators before reaching any final decisions about the form of the scheme or the nature of the arrangements for reimbursement. It is widely recognised that this regular contact is vital to the smooth running of any scheme and this will be especially so with the greater formality introduced by the new legislation. It is important to remember in this context that the requirements and problems of small and new operators are sometimes different from those of large and well established ones. Authorities should therefore ensure that proper consideration is given to the interests of both groups.

6. Such discussions may also be valuable in relation to the practical assistance which operators can provide in the running of a scheme. Operators may be willing, for example, to incorporate information about concessions in their own publicity at no cost or to issue passes or tokens through their ticket offices. If an authority are considering introducing automatic on-bus recording of the use of passes, an operator may have valuable experience on the practical problems associated with electronic ticketing equipment. There are many other detailed matters such as determining the size and layout of passes so as to assist recognition and checking by the operator's staff, procedures for the handling of tokens or the design and manufacture of signs indicating on which vehicles concessions are available, where early discussions could avoid annoying practical problems at a later stage.

Arrangements for publication

7. It is the authority (or authorities) which establish a scheme which will be responsible for publishing details of the scheme itself, but the administering authority will have the responsibility for publication of the arrangements for reimbursement. The two will generally be the same, except in the metropolitan areas, where the PTA will be responsible for publishing the scheme and the PTE the details of reimbursement. It

would clearly be sensible to publish the arrangements for reimbursement at the time when the details of the scheme itself are made public.

8. The **scheme** must include details of:

- the concessions to be provided (e.g. free, half-fare, etc);
- the people to whom concessions are currently available; and
- any standard entry dates for operators joining the scheme.

It should also include any other conditions applying to the operation of the scheme, such as the times of day or days of the week on which concessions are available and the area covered by the scheme.

9. The **arrangements for reimbursement** must provide a detailed description of the basis on which reimbursement of operators of eligible services is to be calculated. This should be a statement of principles only and need not specify amounts due. Indeed, in view of the requirement for issue of formal variation notices to operators who are subject to compulsory participation when changes are made in arrangements for reimbursement as published there would be advantage in avoiding the use of specific numerical elements as far as possible (see Chapter 4, paragraph 17). The objective should be to make it possible for operators to form a clear idea of the payments they can expect to receive under it. The amount of detail necessary will depend on the type of scheme involved and the method of calculation devised. It should include details of:

- the standard method of reimbursement (Chapter 3 para 2);
- how generated journeys are to be allowed for (Chapter 3 paras 5-6);
- where appropriate, the fare levels on which calculation is based (Chapter 3 para 31);
- the manner of making payments (Chapter 3 para 37).

10. The information about the arrangement should also include details of any other conditions applying to participation in the scheme, such as:

- a requirement to recognise a particular form of pass;
- any requirement to display a logo or other form of identification;
- requirements as to allowing staff on vehicles to carry out surveys of ridership;
- any requirement to make use of ticketing equipment supplied by the authority.

Methods of publication

11. Authorities should make such arrangements for publication of the scheme and the arrangements for reimbursement as they think fit. The objective should be to make sure that they are brought to the attention of all operators. It is a minimum requirement of the Act that copies of both documents should be available for inspection at the principal office of the authority and that copies should be supplied to any person requesting them either free of charge or at a charge representing the cost of providing the copy. Authorities may consider that this can best be done by notifying operators in the area individually, (and they should bear in mind that potential operators may also wish to receive such details), or by placing a notice in the local press.

Formal entry into the scheme

12. An operator's entry into the scheme would normally be in the form of a formal agreement between the operator and the authority based on the conditions of the scheme and the standard method for calculating reimbursement. In some cases this may simply take the form of an exchange of letters; in others a more formal written contract may be appropriate. This documentation will refer to the standard conditions of participation and will also cover any conditions specific to that operator's services.

Variation to the scheme or reimbursement arrangements

13. From time to time an authority may wish to vary their scheme perhaps by extending the categories of people eligible for concessions or the times when concessions are available, or vary the arrangements for reimbursement. Any intended variation must be published and details made available in the same way as the original scheme and reimbursement arrangements. Local authorities will almost certainly wish to notify directly all operators participating in the scheme. If the scheme requires participating operators to give notice of their intention to withdraw from it an authority must give at least 28 days notice of their intention to vary the scheme or reimbursement arrangements so that operators are able to withdraw from the scheme, if they wish, before the variation takes effect (see paragraphs 18 and 19 of Chapter 1).

Operation through an agent

14. It may be that an authority prefer to have a concessionary fares scheme administered on their behalf by an agent. Such an agent might be another authority–for example, in a joint scheme, one authority might take over the responsibility for the actual running of the scheme on behalf of all the members, or a county council might act on behalf of a number of district councils–or some other independent agent who is in a position to take on this work of scheme management for authorities, perhaps on a commercial basis. There are, however, two points to be borne in mind:

- ultimate responsibility for decisions on such matters as arrangements for payment and methods of reimbursement, and on any use of compulsory powers, must rest with the authority itself or, in the case of a joint scheme, jointly with all member authorities;

- a person who is an operator holding a PSV operator's licence is debarred from acting as an agent in this way. He may however carry out routine functions such as issuing passes or redeeming tokens on behalf of the authority.

Conditions of participation

15. The general intention behind the legislation is that the main conditions of participation should be the same for all operators of eligible services (subject to certain exceptions in relation to reimbursement discussed in Chapter 3). This ensures that all operators are able to participate in a scheme on an equal basis, and removes the possibility of an authority discriminating in favour of, or against, one particular operator. The terms of these conditions will be those established by an authority in their published arrangements for reimbursement (as outlined in paragraphs 9 and 10 above).

16. The sort of conditions adopted by an authority will reflect the particular nature of their scheme. However, the powers of an authority to impose conditions are limited by the Regulations. An authority may not impose any condition which requires the operator to change the way in which he would otherwise provide the service; in particular, it would not be possible for an authority to require an operator to use particular types of vehicles on the services in question or reserve a certain number of seats specifically for concessionary passengers.

17. Authorities do have the power to require operators participating in the scheme to recognise any form of pass, token or voucher issued to those who are eligible to receive concessions on their services. Operators can also be required to display a sign on their vehicles showing that they are in the scheme.

18. Operators, however, have a legitimate interest in being able to require any person claiming concessions on their vehicles to be in a position to prove that he is, in fact, entitled to receive them. The Regulations therefore prevent an authority from seeking to require an operator to allow people to travel on his services without having some form of pass or token.

3. Reimbursement

1. It is necessary to ensure that reimbursement for operators is based on principles which both guarantee proper accountability in the use of public funds and provide operators with an assurance that payments will be properly related to the costs they incur. The Regulations therefore:

(a) provide that reimbursement for all types of service will be based on the principle of revenue foregone, which ensures that operators will be no better and no worse off, in financial terms as a result of providing concessions; and

(b) lay down a number of additional conditions, relating only to eligible services.

2. These additional provisions are necessary, in the light of the compulsory powers which authorities possess in relation to eligible services, and because of the need to ensure that all operators of these services are able to compete on a basis of equality. The Regulations therefore require authorities to adopt a standard method of reimbursement, which subject to the exceptions allowed for in the Regulations themselves and described in paragraphs 23-24 below, must be applied to all operators of eligible services. These same requirements do not arise in the case of other services, where there are no powers of compulsion. For those services, the basis of reimbursement is a matter for agreement between the authority and the operator, subject to the overall conditions described at 1 (a) above.

3. Revenue foregone

The Regulations set authorities the objective of ensuring that operators are no better and no worse off financially as a result of their participation in the scheme. Although this means that reimbursement should be neutral in direct financial terms, operators will be well aware that there are substantial advantages of a more general nature associated with participation in concessionary fares schemes. Such participation marks the status of the operator as part of the accepted pattern of public transport in his area. It also has longer term commercial benefits. There is, for example, good evidence to suggest that providing concessions for children and young people makes them familiar with public transport and encourages them to continue to use it when they become adults. Similarly, retired people attracted to an operator's services by concessionary fares may subsequently travel on excursions or tours run by the same operator. Participation in the scheme will therefore make it easier for operators to retain or improve their share of the overall market for public transport.

4. In order to give effect to the objective of "no better and no worse off", the Regulations require that reimbursement should be based on the principle of "revenue foregone" which broadly follows the method recommended by CIPFA and has been applied by a substantial number of authorities in their schemes over a number of years. This principle means that reimbursement should compensate the operator for:

- the net revenue foregone as a result of allowing concessionary passengers to travel free of charge or at a reduced rate; and
- any additional net costs incurred as a result of providing concessions.

5. The existence of concessions will increase the number of concessionary passengers travelling by public transport. Authorities will therefore need to make allowance for this generated travel when calculating the amounts payable to operators by reference to what would have happened in the absence of the concession. This can be illustrated by the following example. An operator who carries 100 journeys by members of an eligible group at an average fare of 30p when there is no concession will receive fare revenue of £30. If a half-fare concession were then to be introduced, concession holders might make, say, 120 journeys at a half fare of 15p. This would yield fare revenue of £18, and the reimbursement required to ensure that the operator was no better and no worse off as a result of his participation in the scheme would be £12 (ie £30 minus £18), assuming that he did not incur any additional costs in carrying concessionary passengers.

6. It will be for authorities to determine the allowance for generation most appropriate to local circumstances. The annex to DTp Circular 1/86 (SDD 5/86, WO 12/86) outlines a number of possible methods for determining this allowance. It would normally be appropriate to apply the same factor across the whole of a scheme, unless there are good reasons for doing otherwise, since the considerations influencing the behaviour of individual travellers are likely to be general to the area as a whole. One important factor will of course be the nature of the concession provided–for example, whether travel is free or at half fare, and whether concessions are available all day or only off-peak. Authorities without previous experience of calculating generation may find it satisfactory to adopt the existing generation factor already used by another authority with a similar scheme. Operators frequently use generated traffic to justify a commercial concession, and they may also be able to advise the authority on how to approach the subject.

Additional costs

7. Where the extra passenger journeys generated by the existence of the concession merely fill empty seats on a vehicle, there will be no significant additional cost to the operator in catering for these passengers. However, in circumstances such as those where the generated traffic leads to a service being filled beyond the capacity of the vehicles which would be used in the absence of the concession the Regulations require authorities to pay the net additional costs of providing the extra capacity. If the operator were the operator of an eligible service subject to compulsion to participate in the scheme, it would be open to him to apply to the Secretary of State on the grounds that this requirement was not being properly met. In most circumstances, any demand for extra capacity will be felt across the whole of a scheme and authorities will need to discuss with operators the basis on which these costs should be calculated.

8. In some circumstances it may be appropriate for the authority to abate the generation factor applied under the revenue foregone method to compensate for such costs. There may however be certain circumstances under which generated traffic has a particularly marked effect on a particular service or group of services. In such cases, it would be for the operator to provide the authority with specific evidence of the extra costs incurred and the authority would be required to meet the claim, if the operator could substantiate it.

Generation–tokens

9. In the past generation factors have been considered primarily in relation to pass-based concessionary fares schemes. The same basic principle will however apply in token and voucher schemes, although the mechanism by which generation occurs may differ. At a low value of issue, tokens are likely merely to substitute for cash expenditure on the part of the concession holder. However, where the value of the issue is high and the concession holder has a large volume of resources useable only for travel purposes, it is likely to affect his travel behaviour, increasing the number or length of journeys made. The level of token issue at which such generation starts to become important has not been well researched, although the Government believe that it is unlikely to be found at issues of less than £20 per year at current values. Where therefore an authority issue vouchers or tokens at a level which there is reason to believe may result in the generation of traffic, it will have to consider whether arrangements are needed to reduce the amounts paid to operators presenting the tokens for redemption accordingly.

Calculation of reimbursement to operators of eligible services

10. The regulations requiring the use of the revenue foregone method are concerned primarily with the need to ensure that operators are paid on a uniform and justifiable basis which guarantees efficient use of public funds. They therefore apply to all services on which an authority make payments for concessionary fares, whether or not they are "eligible services" with the right to participate. So far as eligible services themselves are concerned however there is a need to make further provision for the fair and proper treatment of all operators in order to ensure that there is no distortion in the terms of competition and that no operator is discriminated against either relative to other operators or in the event of his being made subject to compulsory participation. There are, therefore, additional regulations in the case of these operators. These give authorities an objective of ensuring that operators of eligible services receive proper reimbursement in relation to the total number of concessionary journeys carried on all of that operator's services and the value of the fares that would have been paid for these journeys. They also require authorities to adopt a standard method for reimbursement to such operators; make provision as to the basis and timing of reimbursement payments; and provide for operators to receive additional payments for costs which they incur as a result of their participation in the scheme.

Standard method for the calculation of reimbursement

11. Under Section 94(3) of the Act, authorities are required to adopt the same method of calculating reimbursement for all operators of eligible services, subject to any discretion allowed to them in the Regulations. The Regulations require an authority to establish a "standard method" for calculating the number of journeys carried by each operator and the amount of fares revenue attributable to those journeys. This is the method of reimbursement that an authority are required to publish under section 95 of the Act, and the method under which all operators of eligible services have the right to participate.

12. Where some method for the continuous recording of journeys is available, this calculation will present no problem, and the Government expect that over the next few years the application of micro-electronic technology to ticketing and pass-reading equipment will make this the norm for pass-based systems. In the absence of such equipment, an authority running a pass-based scheme will need to adopt a standard method that estimates the level of ridership and fares paid by reference to empirical data about the

numbers of journeys made by concessionary travellers combined with information about the overall characteristics of the services in the scheme.

13. To minimise the effect of any errors that might arise from such estimation in the case of any individual service the Regulations provide that the calculation should be correct in relation to the overall total of concessionary passengers carried on all of an operator's services, rather than on each of an operator's services individually. In addition, provision is made in the Regulations for an authority to waive their standard method in a number of individual cases, where its use would impose undue burdens on operators and authorities; these are described in paragraph 23 below.

Continuous monitoring

14. Use of automatic ticketing or pass-reading equipment has many advantages as a basis for reimbursement, since alternative methods must to some extent be based on estimation. It may well be that as such equipment becomes more readily available, even among smaller operators, authorities will increasingly wish to make use of it in calculating the sums due to operators. The use of this equipment seems likely to spread fairly rapidly quite independently of its value for concessionary fare reimbursement in the light of the clear benefits which the information produced offers to operators in terms of improved operating efficiency and cash flow control.

15. There are however difficulties in its use as a standard method. It will not be possible to rely entirely on this source of information until all, or at least the great majority of, operators have this equipment. The regulations give authorities the power to require operators to install and make use of automatic recording equipment used as a basis for reimbursement in their concessionary fares scheme, but only if, in cases where the operator is required to install a particular type of equipment authorities are prepared to provide it at their own expense. Authorities will naturally be reluctant to meet the costs involved in such an approach unless the great majority of operators are already suitably equipped. Authorities may however use their powers under Section 56 of the Transport Act 1968 (as amended) to make grants to operators for the purchase of such equipment; joint funding of such equipment might therefore be appropriate, since it has clear benefits to both parties. Alternatively it might be possible to use a limited number of sets of ticketing or pass-reading equipment to be circulated amongst all operators on a sample basis, although this will necessarily yield less precise results.

16. It should however be noted that in a fare free or flat fare scheme such equipment will not give any indication of the fares attributable to the concessionary journeys recorded. In these cases, the fares attributed to these journeys will have to be determined by other means, either a survey exercise, or by reference to the fares shown by the equipment to have been paid by non-concessionary passengers, if operators are prepared to make this available. It should be noted, however, that the Regulations do not allow authorities to compel operators to supply them with information from automatic equipment which relates to passengers who are not eligible to receive concessions.

Survey-based monitoring

17. Periodic sample surveys of the level of concessionary patronage carried on an operator's services can provide a viable means of determining the gross level of reimbursement due to an operator. However, unless the method of surveying is controlled very rigorously, and the surveys are conducted at very frequent intervals, it will be necessary to "gross-up" the survey results by reference to other data on the operator's service which can be easily supplied on a continuing basis, such as mileage operated, overall patronage or fares revenue.

18. The use of such routine data means that proper account can be taken of any changes in the level of service, fares or trends in patronage, providing the concessionary passenger's behaviour is similar to the general trend. However, since some of this data may be regarded by operators as particularly sensitive, the Regulations provide various safeguards as to the conditions under which it can be supplied and used. These are discussed in paragraphs 29-31 below.

Pool-based estimtes of patronage

19. The survey method referred to above assumes that the authority wish to estimate the patronage of each operator's services directly. However, in some schemes, particularly smaller ones and those with only a few major operators, it may be satisfactory to calculate the number and value of journeys made by concessionary travellers as a whole, and then apportion the resultant sum between operators participating in the scheme on the basis of factors such as the proportion of total capacity each provides, or the

proportion of the market or the total patronage each carries. In this method the requirement for survey work is reduced to a minimum, since the survey is needed simply as a means of estimating the average number of journeys made by each pass holder and the sampling need not be operator based. Some authorities may find it possible to dispense with these surveys altogether on a regular basis if they are content that national or other pre-existing survey data reflects the characteristics of their area. If operators are to be paid from a central revenue pool, this would then be derived by grossing up the overall number of concessionary journeys at average fare, weighted to take account of typical journey lengths and the different fares scales of participating operators. Payments to individual operators would be apportioned according to their share of the total market for services covered by the scheme as measured for example by vehicle miles operated during the hours of availability of the concession. The Regulations provide for an authority to weight vehicle mileage according to different vehicle carrying capacities, and to sub-divide the area in which the base level of travel is calculated, in order to take account of differences in characteristics of the resident population.

Discretion to use alternative methods

20. The three approaches described above–continuous monitoring, survey-based monitoring, and pool-based estimation–are illustrations of the sorts of standard methods that an authority may adopt for calculating reimbursement in a pass-based scheme. Other methods which provide an empirical basis on which operators are reimbursed for journeys carried would also be permissible.

21. With any standard method other than continuous monitoring, there may be instances where the standard method adopted fails to give a true picture of an operator's patronage. In such instances, an authority are required to take account of any data produced by the operator which gives a more accurate picture; this might be the case where an operator had conducted his own survey more recently than that of the authority, or where that operator was equipped with electronic ticketing equipment that provided precise returns for his service.

22. Conversely, if an authority had reason to believe that the assumptions on which their standard method was based were unduly favourable to a particular operator (because, for example, he carried a far lower proportion of concessionary passengers than would normally be assumed on the basis of overall average data), they could institute a special survey designed to establish the true position.

Exemptions to the standard method

23. There are certain cases where the application of the "standard method" principle may prove unduly onerous to both the authority and the operator, or where the timescale required to set up the necessary calculations in relation to a new service would delay the participation of that service in the scheme. These cases are:

- services provided by vehicles with eight or less seats for fare-paying passengers (e.g. taxis operating as local services or school services on which a few seats are available for fare-paying passengers);
- services provided by operators whose total vehicle mileage within the scheme area at times when concessions are available does not exceed 150,000 miles per year (e.g. small operators or those whose main operation is elsewhere);
- any service for a period up to three months from its entry to the scheme.

24. The Regulations provide that, in such cases, the operator and authority may reach an ad hoc agreement as to the reimbursement to be paid for the level of patronage attributed to such services by negotiation, without reference to the standard method. Such payments should however conform with the authority's objective of reimbursing the operator in relation to the journeys actually carried. The exercise of this option is at the discretion of the authority. However, if the authority are unable to reach such an agreement with the operator, he retains the right to participate under the standard method.

Collection of information

25. Any method of reimbursement will involve the administering authority in collecting and processing a certain amount of information about an operator's services, and authorities will need to include a statement of their requirements in the arrangements they make with operators (see Chapter 2). Regulations covering the supply of information are designed to ensure that, while the authority can obtain the details necessary for reimbursement, the interests of the operator are properly safeguarded in terms both of the burden of effort involved in supplying the information, and preservation of confidentiality on matters relating to the

operator's commercial position. Authorities will wish to discuss with operators how to structure their information requirements so as to meet these points.

26. Authorities may, if they wish, require operators to notify them of any changes in the characteristics of services in the scheme (including the fares scale) within seven days of these changes taking place. However, where a lot of detailed changes are taking place regularly, as operators adjust to the competitive environment, an authority may find it more satisfactory simply to receive a monthly or quarterly summary of these changes or of the average fares level applicable over that period.

27. Except in the case of revenue data the Regulations set the maximum frequency at which an authority can require information in the form of statistics as once every four weeks; revenue data may only be required on a quarterly basis. In practice, many authorities will find less frequent returns are sufficient for their needs.

Confidentiality

28. There is a general requirement that any information supplied by an operator to an authority, which is not otherwise public knowledge, should remain confidential, and should be used only for the purposes of calculating concessionary fares reimbursement. This will apply to both manually collected data, and returns from electronic recording equipment.

29. Data on the patronage and revenue accruing to various services will be used by operators in managing their everyday business, and will therefore be a readily available source of information for monitoring trends. However, because these data are used for everyday business purposes, there is a need to protect the confidentiality of the information in order to ensure that it does not undermine an operator's commercial interests by revealing full details of the operation of a particular service. The Regulations therefore provide certain safeguards. As noted in paragraph 27, there are special limits on the frequency with which revenue information may be required. Authorities have the power to require information at a level below that of the operator's participation in the scheme as a whole, so that they can if they wish use it to break down a large area such as a metropolitan county into smaller units, or to take account of differences between urban and rural areas. Authorities are not, however, allowed to collect information at a level that would disclose numbers of passengers or fares paid on any particular service or group of services run by the operator. For similar reasons, the Regulations prevent authorities from requiring this information in the case of the small scale services mentioned in paragraph 23 above. There would of course be nothing to prevent operators from providing information on individual services if they are prepared to do so on a voluntary basis.

Revenue information

30. The revenue about which information could be required would be all revenue received by the operator from or in respect of passengers travelling on services covered by the concessionary fares scheme. If separate schemes are operated by more than one authority in the same area, (if, for example, the information requested relates to a district council scheme for elderly people in an area where there is also a scheme for children operated at county level) the information would have to include details of concessionary fare payments made under the other scheme. Where off-bus ticket sales account for a part of the operator's revenue in relation to services within the scheme, account would also need to be taken of this.

Fares levels

31. The Regulations provide several alternative bases for calculation of the fares which would have been charged to concessionary travellers in the absence of concessions. These will be appropriate to different standard methods of reimbursement. The same base would normally be used for all operators to whom the standard method applied. The alternatives are:

- the actual fares charged to travellers on a particular service;
- the weighted average of fares charged to travellers on all the services of an operator within a scheme;
- the weighted average of fares charged to travellers on all eligible services within a scheme.

32. This information may be collected in a number of different ways. In reduced fare pass schemes, where a continuous monitoring method uses electronic ticketing equipment, the returns from that equipment may contain the necessary information—either as a simple total or broken down. Similarly, survey methods that use patronage and revenue data for grossing-up will also derive an aggregate of the fares paid. However, in the case of pool-based methods, or in any fare free or flat rate concession, the authority will have to make a

further set of assumptions about the fares to be used in the calculation. It will be necessary to weight the range of fares on the scale to the distribution of journey lengths travelled by concessionary travellers; authorities will need to consider whether or not their journey characteristics are the same as those of non-concessionary travellers. Where the fares calculation is based on the fares charged by all operators, it will also be necessary to weight the fares of different operators in relation to the proportion of concessionary journeys carried.

33. In those cases where an authority decide to reduce the level of reimbursement to the operator of a premium fares service, they must reimburse that operator in relation to the general level of fares charged on other services running on that route or similar routes. In cases where the standard method makes use of an average fare, it would be appropriate to use that fare for this purpose.

Checking of information

34. An authority have the power, under Regulations, to require an independent audit as to the accuracy of any data supplied to it by an operator. With this power, some authorities may prefer to allow the operator to perform the necessary calculations for reimbursement according to a formula supplied by the authority, and make a claim for payment by the authority. This approach would have the advantage that no sensitive information was passed from the operator to the authority, although the authority could by audit be assured of the accuracy and correctness of the operator's claim.

Surveys

35. The provisons of the Regulations allow authorities to establish a standard method which relies on survey data. As part of the arrangements they adopt for reimbursement an authority may require the right of access by their survey staff on an operator's vehicles free of charge. The survey will primarily be concerned with the characteristics of concessionary travellers–the numbers travelling, their frequency of travel, and the fares paid (or in a free or flat fare scheme, the journey length, from which the fare can be deduced). Additionally authorities may on occasions wish to ask questions about other aspects of the concessionary travellers' activities in order to deduce what generation takes place. For the purposes of grossing up to aggregate revenue or patronage data, it will also be necessary for the surveyors to count the number of non-concessionary travellers on the vehicle and ascertain the fares they have paid; however, the right of the authority to collect information about such passengers does not extend beyond this. The Department will be able to provide a guidance note on survey methodology to authorities who would find it helpful.

Review of reimbursement arrangements

36. In any standard method that does not involve continuous monitoring, the basic factors by which the amounts paid to operators by way of reimbursement are calculated will need reviewing from time to time. The frequency with which reviews are necessary will depend on the exact method used, and the rate at which services, fares and patronage change. Authorities using a pool-based method of reimbursement will find that the Regulations allow them to control entry to the scheme in such a way as to make quarterly calculations of an operator's share of the pool possible. Where survey methods are used, authorities may find it useful to institute an annual cycle of surveys covering each operator. The Regulations require authorities to review the basis on which reimbursement to each operator (including those covered under the exemptions for small operators and new entrants) is calculated once every 12 months, and they will find it useful to discuss with each operator whether there is any new information which it seems appropriate to use in his case.

Periods of payment

37. The Regulations provide that periods for payment to operators should be no longer than three months, with the payment being made half-way through the period, so that it will be half in arrears and half on account. Since this will involve some degree of estimation (at least in relation to payments on account) it is provided that up to 15% of the total amount estimated to be due can be withheld. Final settlement should then be made in the following three month period, where that is possible, and the authority would be liable to pay interest on the outstanding sum if they failed to meet that deadline when they were in a position to do so. (In the case of new schemes, the period before interest is due is extended to six months.) Final settlement will, however, depend on the operator supplying the proper information on which his entitlement can be assessed. Provision may be made for the recovery of overpayments where necessary, by deducting the relevant amount from future payments due to the operator.

4. Compulsory Participation

1. Local authorities have powers to require operators to participate in a concessionary fares scheme, corresponding to the rights of operators to be included in such a scheme if they wish. These powers, like the right to participate, apply only to eligible services (including registered local services provided by taxi services). This Chapter covers the procedures for:

- the initial use of powers of compulsion;
- the administration of the scheme as it relates to operators who are required to participate; and
- applications to the Secretary of State against the use of these compulsory powers.

Considerations relevant to use of compulsory powers

2. Authorities will wish to consider their options carefully before deciding whether to make use of these compulsory powers. There is no obligation on them to ensure that all operators in the area covered by a scheme take part in it, and there may be considerable advantages to be gained from proceeding by way of negotiation and mutual agreement, rather than early resort to compulsory powers. A scheme which relies heavily on the compulsory participation of unwilling operators is unlikely to be as successful as one in which operators participate voluntarily because they recognise the commercial advantages of doing so and see the terms of reimbursement as basically fair. Since the procedures for enforcing participation are necessarily formal, they involve a good deal of administrative work, and will inevitably reduce the flexibility with which a scheme can be operated. There is the further point that the exercise of compulsory powers automatically gives the operator a right to apply to the Secretary of State for review of the basis on which compulsion is being imposed. This means that the authority must be satisfied, before making use of these powers, that the details of their arrangements for reimbursement can be defended successfully against any challenge produced by the operator.

3. Authorities may therefore find it sufficient to regard the power of compulsion as one to be held in reserve. Providing their arrangements for reimbursement are satisfactory, operators will generally be content to participate voluntarily, in the knowledge that they might otherwise be compelled. Conversely, if the operator does have genuine doubts about the adequacy of the arrangements and declines to participate voluntarily, it is highly likely that he will exert his right to make an application for cancellation in the event of a participation notice being served.

4. Different procedures will apply depending on whether compulsory powers are to be exercised:

- in relation to a service (whether existing or proposed) which has not previously been covered by the concessionary fares scheme; or
- in relation to an existing service which has previously participated in the scheme either on a voluntary or a compulsory basis.

First application of compulsory powers

5. An authority* which wish to make use of compulsory powers in respect of a service or services not at that time participating in the scheme (which may include a newly registered service), may do so by serving a **participation notice** on the operator. Such a notice may be served at any time after the details of the scheme and the reimbursement arrangements have been published. The only exception to this is the transitional cases of new concessionary fares schemes coming into operation on Deregulation Day (26 October 1986). If an authority wish to be in a position to use compulsory powers in respect of such services, they must publish details of the scheme and the arrangements for reimbursement by **8 April 1986**. If these details have not been published by that date, the authority will not be able to serve any participation notice taking effect before **1 April 1987**. In metropolitan areas in England the power to serve a participation notice rests with the PTE, but before so doing they must first obtain the consent of the PTA.

*In the case of a joint scheme any notice would have to be served by all authorities acting jointly.

Basic provisions applying to participation notices

Period of Notice

6. A participation notice will take effect **either** at the end of the period of notice specified in the notice itself **or** on the date on which a new service comes into operation–whichever is the later. Under the Regulations the **minimum** period of notice that can be given is **28 days**.

Coverage

7. A notice can only apply to a specific named service or services. It cannot be applied at large to all the services run by a particular operator unless all those services are separately identified. Any new service which an operator proposes to provide can only be made subject to compulsory powers if it is identified in a specific notice issued for that purpose.

Content of the notice

8. A notice must be in writing and can be served by hand, by registered post or by recorded delivery. It must be accompanied by copies of the details of the scheme and the reimbursement arrangements as published. It must identify the service or services to which it relates, by reference to their terminal points, the principal places served, and the serial number allocated by the traffic commissioner. It must also include the following:

(a) the date on which it is being served (this will be the date on which the operator receives, or can be expected to receive, the notice–it would be wise to allow two working days for delivery by first class post, four for delivery by second class post);

(b) the date on which it is to take effect;

(c) the period for which the obligation, once imposed, would continue to apply (up to a maximum of three years);

(d) any details of the reimbursement arrangements, not included in the published material, which would be needed to make it possible for the operator to estimate the amounts which he would receive by way of reimbursement;

(e) particulars of any other requirements relating to the operation of the scheme;

(f) reminders of

  (i) the right of the operator to make an application to the Secretary of State against the terms of the notice;

  (ii) the right of the operator, if he becomes subject to the notice, to apply to the Secretary of State for release from his obligations under it at some later date;

  (iii) the duty of the operator, if he does apply to the Secretary of State, to give prior notification to the authority of his action; and

  (iv) the duty of the operator to provide the concessions specified, once he is subject to the notice, and the penalty for failing to do so.

Duration

9. Once a participation notice takes effect the obligation to provide concessions in accordance with it will remain in force for the period specified in the notice itself. The maximum period that can be specified in this way is three years. This period will, however, start to run again as from the date of any changes made in the scheme or the reimbursement arrangements which are accepted by the operator–see paragraph 14 below. The authority can, if they wish, release an operator from his obligations at any time by serving a notice on him in writing. Once the period specified has come to an end, the obligation to provide concessions lapses, although it would be open to the authority if they wished, to serve a new participation notice.

Sanctions

10. An operator subject to a participation notice must offer concessionary fares from the date set by the authority. If he systematically fails to comply with this obligation he will be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £400). It is the intention to make conviction for such an offence a relevant conviction under the terms of the Public Service Vehicles (Operators' Licences) Regulations 1981, and the traffic commissioners would then have regard to it when considering whether an operator should continue to hold his licence.

Response to a participation notice

11. When an operator is served with a notice, he may wish to challenge it by making an application to the Secretary of State. (See paragraph 18 below). He would also be well advised to contact the authority to discuss the precise details of how he is to offer concessions and claim reimbursement, and to clarify any points in the reimbursement arrangements on which he is in doubt.

Changes in the scheme or the arrangements for reimbursement

12. If an operator is subject to any form of requirement to participate in the scheme, this requirement will be tied to the form of the scheme and the reimbursement arrangements as they exist at any given time. This will be true of operators subject to participation notices. It will also be true of operators who have joined the scheme on a voluntary basis, if the authority have exercised the power conferred on them by Section 97(1) of the Act to require operators who are participating of their own accord to give notice before withdrawing from it. The Regulations provide that the maximum period of notice that can be required under this power is 42 days. (See Chapter 1, paragraphs 18 and 19).

13. There is, therefore, a procedure for authorities to give due notice of any proposals for changes in the scheme or the reimbursement arrangements to all operators who are subject, either to a participation notice, or to a requirement to give notice before withdrawing from the scheme. (There is also a more general requirement to publish details of any such changes, in the same way as the original details of the scheme and the reimbursement arrangements were published under the terms of Section 95(2) of the Act). The procedure is by way of the issue of **variation notices**.

14. A **variation notice** should be served in the same way as a participation notice–by hand, registered post or recorded delivery. Like a participation notice it must give at least 28 days notice of the changes to be made in the scheme or reimbursement arrangements. If the operator responds by indicating that he is prepared to continue to participate on the new basis **or if he fails to make any response,** the changes described in that notice will come into effect as from the date set, and the operator will be under an obligation to continue to participate on the new terms. If he is subject to a participation notice, this obligation will run from the new date for the period (three years or such shorter period as the authority may have specified) set by the original notice.

15. However, if the operator indicates that he is not prepared to participate on the new terms, then his obligation to do so would automatically lapse, unless the authority decided to serve a new participation notice (or to serve such a notice for the first time in the case of an operator who was formerly participating on a voluntary basis). If they did wish to be in a position to serve such a notice in the event of the operator indicating that he was not prepared to accept the new terms, then they would have to allow themselves a period of **at least 56 days** plus any time required for the delivery of notices between the issue of variation notices and the date on which the changes were due to take effect. This would allow 28 days for operators to respond to the variation notices, and a further 28 days for the service of participation notices.

Form of a variation notice

16. The notice must identify the service or services concerned in the same way as for a participation notice and must also contain details of:

(a) the date on which the notice is being served (this will be the date on which the operator receives or can be expected to receive the notice–(See paragraph 8(a) above);

(b) the date of the participation notice to which it relates;

(c) the changes which it is proposed to make;

(d) the date on which they would take effect;

(e) the date by which the operator is required to respond; and

(f) reminders that:

(i) a failure to respond will be taken as implying that the operator is prepared to accept the proposed changes; and

(ii) if the changes take effect the operator will be deemed to be subject to a new participation notice, running for the same length of time as the original one as from the date on which the change is made; and

(g) the date on which, if the changes took effect, the new extended participation notice would cease to be effective.

Implications for form of scheme and reimbursement arrangements

17. In view of these formal requirements for service of variation notices authorities will want to consider carefully the form in which the scheme and the reimbursement arrangements are published. It may, for example, be appropriate, where elements such as fare levels or mileages are concerned, to speak in terms of such formulations as 'fare levels to be notified by operators from time to time' rather than quoting actual figures in the text of the scheme or the arrangements themselves. This might make it possible to avoid the need to issue formal variation notices whenever a routine updating is needed. It is desirable that any provisions of this kind to allow for regular updating of specific numerical elements should be discussed with operators before the details of the scheme or reimbursement arrangements are published.

Applications to the Secretary of State for cancellation of a notice

18. An operator has the right to apply to the Secretary of State for the participation notice which a local authority have served on him to be cancelled or varied, or for one or more of his services to be excluded from it. There are two possible grounds on which an application can be made, and the operator can argue that either one or both of them applies. They are:

(1) **That there are special reasons why the scheme should not apply to one or more of his services**

An operator may want to argue that a service should be excluded because it is not, in his view, part of the general pattern of local public transport, and therefore not the kind of service appropriate for inclusion in the concessionary fares scheme. It might, for example, be a service designed for a particular purpose or type of passenger, such as a tourist service or a town centre to airport service intended principally for the use of long distance travellers. The case for exclusion on these grounds would correspond to the case which a local authority can make to the Secretary of State for a service to be excluded from the right to participate on the grounds that it is not part of the general pattern of local transport (see Chapter 1, paragraph 14) and, as in those cases, the Secretary of State is likely to use his power to grant an application made on this basis only sparingly and in exceptional circumstances.

Alternatively–and this is likely to be a much more common ground for applications–the operator may wish to argue that, whilst the standard method of reimbursement adopted by the authority may be acceptable in general terms, it does not provide proper reimbursement for his own service or services. He should, however, bear in mind that the authority will be meeting their objective of making proper reimbursement if the payments cover the cost of providing the concession on all his services taken together. There will therefore be no merit in ignoring payments received for other services when deciding whether to make an application in respect of one particular service.

(2) **That the scheme or the reimbursement arrangements are not appropriate for operators who are participating in the scheme on a compulsory basis**

In this case, the operator would be challenging the whole basis of the arrangements adopted by the authority. This might be the case where the operator felt that the authority did not have the powers to impose a particular condition in respect of reimbursement. Or the operator might want to argue that the standard method did not ensure that, taking all the services provided by each operator as a whole, operators received reimbursement that left them no better and no worse off in financial terms as a result of their participation in the scheme. Guidance on the kind of approach which authorities should adopt in order to comply with this overall objective of leaving operators no better and no worse off is given in Chapter 3 and operators may wish to consult that Chapter when considering whether they wish to challenge a participation notice on the grounds that the reimbursement arrangements are unacceptable, either as applied to a particular service or group of services, or as applied to all services participating on a compulsory basis.

Release from compulsory participation

19. If, at any time during a period of compulsory participation, an operator feels that his circumstances have changed to the extent that he is no longer receiving adequate reimbursement for providing concessions, he can apply to the Secretary of State to be released from his obligations, in respect of any service or services, on the grounds that the method of reimbursement followed by the authority no longer meets the requirements of proper reimbursement as defined in the Act and Regulations. He may, for example, wish to argue that it fails to take account of a growth in the number of concessionary travellers on his services, and that the review procedures followed by the authority have failed to take account of this.

The procedure for making an application: timing

20. An operator who wishes to make an application to the Secretary of State for cancellation of a notice at the time it is served must do so **within 28 days** of receiving the participation notice to which the application relates. If an authority wish they may, when serving a participation notice, include in it a requirement that the operator should give them advance notice if he intends to make an application to the Secretary of State. If they do this, the maximum period of notice that can be required is **7 days**. In any other case, the operator must also give notice to the authority before making his application to the Secretary of State.

21. If an operator subsequently wishes to make an application on the grounds that he is no longer being properly reimbursed, he must give **28 days** notice of his intention to the authority. The procedure to be followed will then be in line with that for applications for the cancellation of a new participation notice (see paragraphs 18 to 19 above).

Form of application

22. The form of the application to be made to the Secretary of State is prescribed in Regulations. It must be in writing and sent by hand, by registered post or by recorded delivery. Besides identifying the operator, the authority and the service or services involved (in the same way as in a participation notice) the application must give:

(a) the date on which the application is made (this will be the date on which the Secretary of State receives or can be expected to receive the notice served by the operator–see paragraph 8(a) (above);

(b) the date on which the participation notice to which it relates was served and the date of any other participation or variation notice which is relevant to the terms on which the operator is participating in the scheme;

(c) the dates on which the obligations imposed by the notice are due to take effect and come to an end;

(d) the basic grounds for the application;

(e) an estimate of the amount of the financial loss which the operator believes would be entailed by the method of reimbursement proposed; and

(f) a statement that the authority have been informed of the application.

23. In stating his grounds for making the application, the operator should aim to include enough information to make it possible for the Secretary of State to decide whether there is a valid case to consider and if so, what additional information he might need. The information should, therefore, be as full as possible. The estimate of the financial loss involved will not, however, be regarded as binding.

24. The application should be sent to the appropriate Secretary of State at the address shown below:

For schemes in **England**

The Secretary of State for Transport
PT2 Division
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

For schemes in **Scotland**

The Secretary of State for Scotland
Scottish Development Department
Roads and Transport Division 2
New St. Andrew's House
EDINBURGH
EH1 3SZ

For schemes in **Wales**

The Secretary of State for Wales
Welsh Office
Transport Policy Division
Phase 1 Government Buildings
Ty Glas Road
Llanishen
CARDIFF
CF4 5PL

Consideration of the application

25. The operator is required to forward copies of the application and its supporting documents to the authority at the same time as he submits them to the Secretary of State. These documents may include survey results or statistical information about the operator's own services and other services in the area. The authority will then have 28 days in which to put forward their response. The Secretary of State can extend the length of this period if he wishes in response to a request from the authority, but if he does so, he must inform the operator of his decision. When the authority do make their response to the Secretary of State, they must copy it to the operator.

26. Once these initial documents have been delivered, the Secretary of State may ask either or both parties to submit further written statements or information, within set periods which must be no less than 14 days in any case. Any documents submitted must be copied to the other party.

27. The Secretary of State may also ask the parties to attend a hearing–but in that case both parties must be invited to attend at the same time. Such a hearing should take place no less than 14 days after the latest round of documentary evidence has been completed. The operator may be represented, if he wishes, by counsel, solicitor or any other person and the authority may similarly be represented.

28. It will of course be in the interest of all parties to carry forward consideration of any application as quickly as possible. The Secretary of State will if necessary consult the parties before setting any deadlines for submission of evidence so as to ensure that proper time is allowed, for example, for the collection of any survey results that may be needed. If, however, information requested is not received from either party by the date set, and the Secretary of State has received no reason for the delay, he has the power to proceed to a determination on the basis of the evidence available.

29. If any authority feel that they need to refer to the service of another operator or operators in responding to the case made by the applicant, in such a way that the other operators can be identified, they must first secure the permission of the operators concerned and submit written evidence that they have such permission to the Secretary of State.

Delegation of power to determine applications

30. The Secretary of State has the power if he wishes to appoint some neutral body to determine applications on his behalf. If the Secretary of State does decide to take this course, the body appointed will have exactly the same powers and responsibilities in settling the case as would the Secretary of State himself.

Status of services whilst an application is under consideration

31. It is important to note that, when a participation notice has been served, it will take effect **as from the date on which it was due to come into operation**, even if the operator still has an application to the Secretary of State under consideration. This means that the operator will be required to provide concessions under the scheme as from that date and he will be reimbursed accordingly. This provision reflects the fact that it will not as a rule be possible to reach a decision within the 28 days which is the

standard period allowed between the service of a participation notice and the date on which it takes effect. The position may be different if a notice refers, for example, to a service which is not yet in operation or, in the initial transitional period, if notices are served before Deregulation Day (26 October 1986). In these cases it may be possible to determine applications before the notice is due to take effect. In other cases, account is taken of the obligation on the operator to provide concessions in the period whilst his application is under consideration by the power which the Secretary of State or his adjudicator has to award compensation if he finds that the operator has suffered financial loss as a result of his compulsory participation in the scheme.

The decision

32. Once the evidence has been considered, the Secretary of State (or the body appointed to act on his behalf) may decide in the case where an operator is making an application in respect of a participation notice:

(a) to reject the application;

(b) to cancel the participation notice;

(c) to vary it by excluding any particular service or services from its operation; or

(d) to modify the reimbursement arrangements as they apply to all or any of the services operated by the applicant.

33. If, in reaching a decision to either cancel or vary the terms of a participation notice, the Secretary of State or the adjudicator appointed by him comes to the conclusion that the provisions of the scheme or the arrangements for reimbursement are not appropriate for operators participating in the scheme other than on a voluntary basis, then he must inform the authority in precisely what respects the scheme or reimbursement arrangements need to be changed to make them acceptable. If an operator who is already subject to a participation notice makes an application for release from it (see paragraph 19 above) the only decision open to the Secretary of State would be to cancel the obligation imposed by the notice if he felt that the operator had substantiated his case.

Compensation

34. If the decision is in terms of (b) or (c), the Secretary of State (or his representative) may direct in writing that the authority should pay the operator a specified sum by way of compensation for any financial losses incurred by him either because a service or services was wrongly included in the concessionary fares scheme, or because the method of reimbursement adopted did not meet the requirements of the Regulations. If the scheme is a joint one, the direction may specify the way in which responsibility for making the payment should be divided between the different authorities involved.

Recovery of Secretary of State's costs

35. The Act gives the Secretary of State the power to require either or both of the parties involved to make a contribution towards the costs incurred by the Secretary of State in deciding an application. This power does not extend to an independent adjudicator, but the Secretary of State may if he wishes recover costs incurred if such an adjudicator is acting on his behalf. It would not be the intention of the Secretary of State to use this power in all cases, but he would reserve the right to do so if he believed that an application was frivolous or vexatious, or that the conduct of either party had been unduly obstructive. The costs charged could include an element for time spent on the case by Departmental staff; any expenses incurred in an oral hearing; any costs resulting from taking specialist advice or from any special survey or study which the Secretary of State considers necessary (on the need for which he would first consult both parties); and any costs incurred or fees charged by an independent adjudicator.

Publication of results of applications

36. The parties to the determination of an application will be given a statement of reasons for the way in which the application has been determined. In addition the Departments involved will from time to time publish summaries of the determinations that have been made, for the information of interested parties. The precise form of this publication and the first date for its appearance have not yet been decided, but further details will in due course be available from the addresses given in paragraph 24 above.

5. Other Powers for the Provision of Travel Concessions

1. Sections 103 to 105 of the Act are concerned with the provision of travel concessions outside the normal framework of schemes established under Section 93.

Concessions as part of a tendering agreement

2. There may be cases in which an authority do not wish to establish a general concessionary fares scheme, or at least not for members of a particular group, such as young people in full-time education, but do wish to make it possible for members of that group to receive concessions on a particular service or group of services. Section 103 gives them the power to do this by making the provision of travel concessions for the group in question a condition of a tender agreement. This power can only be used if the authority do not operate a concessionary fare scheme for members of that group in the area, and the scope for providing concessions in this way is limited to the groups of people who would be eligible to receive concessions under Section 93 (7) (see Chapter 1, paragraph 3). If the authority intend to adopt this approach, they should include the provision of the concession in the specification for the service or services concerned when they go out to tender.

3. If another authority are operating a concessionary fares scheme for members of the relevant group in the same area (for example, if a county council wishes to make arrangements for the provision of concessions for children on specific services in an area where the district council operate a general scheme providing some travel concessions for children) any reimbursement which the operator receives under the general scheme will have to take account of the payments which he is receiving under the subsidy agreement. Similarly, if the authority which made the subsidy agreement subsequently introduce their own general scheme, the operator will remain subject to the arrangements of the original subsidy agreement until it expires or is renegotiated.

Services operated directly by PTEs

4. Special provisions are needed in the case of those services which continue to be directly operated by the PTEs themselves (notably the Tyne and Wear Metro and the Merseyside ferries) since in that case there is no distinction between the administering authority and the operator. Section 104 gives the PTE the power to provide concessions on these services for the groups of people eligible under Section 93(7), provided that these correspond to the concessions available on the services of other operators under the scheme established by the PTA. Other authorities (for example metropolitan district councils or authorities in neighbouring areas) would have the power to provide concessions on these services in the normal way, if they wished, using the powers conferred on them by Section 93 (see Chapter 1).

Services operated directly by other authorities

5. Section 105 of the Act makes similar provision for other authorities to provide concessions on any public passenger transport services which are directly operated by them. These would include such services as ferries as well as any bus service operated by a district council whose powers to operate remained by virtue of an exemption granted under Section 71.