

# Applications to the Secretary of State - A Guide for Applicants & Travel Concession Authorities

## Introduction

1. This document sets out the requirements and the process applied by the Department for Transport ("the Department") when considering applications to the Secretary of State for Transport ("the SoS") for modification of concessionary fares schemes and arrangements made under the Transport Act 2000 ("2000 Act"), and the Transport Act 1985 ("1985 Act") as amended by the Concessionary Bus Travel Act 2007 ("2007 Act").

This document should be read in conjunction with The Travel Concession Schemes Regulations 1986 ("the 1986 Regulations"), The Mandatory Travel Concession (England) Regulations 2011 ("the 2011 Regulations") which came into force on 12 May 2011, and the Department for Transport's current Reimbursement Guidance to assist local authorities in calculating the reimbursement due to bus operators. The Department also makes available a Reimbursement Calculator ("RC") to be used alongside the Guidance. The latest version of the Reimbursement Guidance and Calculator can be found at

<http://www.dft.gov.uk/publications/reimbursing-bus-operators-for-concessionary-travel/>

## Concessionary fare reimbursement

2. The 2007 Act guarantees free local bus travel to eligible older people and eligible disabled people on off-peak bus services anywhere in England. This mandatory concession may be supplemented with more generous concessions at the discretion of a Travel Concession Authority ("TCA") under section 93 of the Transport Act 1985. For example this might enable a discretionary entitlement to be provided for residents of a Scheme area for journeys starting within the principal area of the Scheme.

3. For the mandatory concession operators must be reimbursed for providing the concession by the TCA for the area in which the journey began. Sections 149 and 150 of the 2000 Act make provision for the reimbursement of operators by TCAs.

4. In addition to the UK legislation governing concessionary travel schemes, TCAs are obliged to comply with European Commission Regulation (EC) No 1370/2007, which sets out the overarching rules for reimbursement of public service obligations and places a duty on TCAs to ensure that bus operators are not over compensated. Concessionary travel schemes are considered to be public service obligations.

5. The objective of reimbursement is that the operator should be left ‘no better, no worse off’ as a result of the existence of concessionary travel schemes. This ensures that operators are fully compensated for the service they provide but do not receive any hidden subsidy. Any such subsidy could constitute unlawful state aid.
6. Concessionary fare reimbursement is made up of two elements:
  - (1) the “revenue forgone”, i.e. the revenue operators would have received from those concessionary passengers who would otherwise have travelled and paid for a (full fare or discounted) ticket in the absence of a scheme; and
  - (2) the “net additional costs” operators have incurred as a result of the scheme – these could include the costs associated with implementing the concession (scheme administration costs); the cost of carrying additional generated passengers (i.e. concessionary trips that are only made because of the concession); and the net costs associated with an increase in capacity demonstrated to result as a direct consequence of the concession.

## **Who can appeal?**

7. In the event of a disagreement between an Operator and a TCA as to the reimbursement arrangements offered by the TCA, there is a mechanism provided under sections 98(2) and 99(2) of the 1985 Act and section 150(3) of the 2000 Act, by which the Operator can apply to the SoS for cancellation, variation or modification of the arrangements.

## **What constitutes an appeal?**

8. Applications can be made under both the 1985 and 2000 Acts. Under the 1985 Act, operators “appeal” against being compelled to participate in a Scheme through a Participation Notice which has been served on them by a TCA (and the SoS can release them from participation or direct that changes be made to the reimbursement arrangements). Under the 2000 Act operators apply to the SoS in order to obtain changes to the reimbursement arrangements put in place by the TCA that relate to the provision of the mandatory concession by the operator.

## **Special Reasons**

9. Applications under section 150(3) of the 2000 Act and/ or section 98(2)(a) of the 1985 Act are limited to situations in which the operator believes that there are special reasons why the proposed reimbursement arrangements would be inappropriate. The Operator should make clear the special reasons why his circumstances as an Operator mean that the reimbursement arrangements proposed by the authority are inappropriate to him in particular. For example this may be because of the demographic

10. At the time of submitting an application, applicants are required to state the grounds of appeal and any reasons or other matters which the Operator considers to be relevant to the application. If the application is under section 150(3) of the 2000 Act or section 98(2)(a) of the 1985 Act, the applicant must state what the special reasons are that form the basis of the appeal. **Failure by the applicant to state clearly the grounds for appeal at the time of submitting an application could result in the application being rejected.**

11. The SoS reserves the right to request further information (as set out in section 13 below), or to accept other submissions at her discretion, but the **general principle is that the only information from TCAs and Operators that will be considered when reaching a determination is that provided at the time of submitting the application or subsequently requested by the SoS** (for example in pro forma returns which the SoS would normally invite the parties to complete).

12. The SoS may also have regard to other relevant information sources in reaching a determination. These may include regional statistical data, research data or aggregate TCA or Scheme data. If the SoS has regard to additional information sources, the determination will make clear what information of this type has been used.

13. In addition to the written statement containing grounds and any other relevant matters, the 1986 and 2011 Regulations specify the following for an Operator to supply to the SoS when submitting an application:

- The name and address of the Operator of the service or services to which the notice refers;
- The name and address of the TCA or the Scheme managing agent acting on behalf of the TCA (or a group of TCAs);
- Details of each of the services to which the notice refers setting out:
  - the origin and terminal points;
  - a description of the route or routes by reference to principle places served; and,
  - the route number or name (if any) and the serial number allocated by the traffic commissioner;
- The provision of the Act under which the notice is given;
- The date on which the notice is given;
- The date of any relevant Participation Notice or Variation notice;
- The date upon which the obligation imposed by that notice became effective, and the date upon which that obligation will cease to be effective;
- The grounds for the application and, if those grounds included financial loss, an estimate of the amount of such loss; and,

- A statement that notice of the Operator's intention to appeal to SoS has been given to the TCA.

**Provision of this information in applications is a legal requirement and failure to comply could result in an application being rejected.**

14. A copy of the application notice and a written statement should be sent by the applicant to the relevant TCA at the same time as they are submitted to the SoS. The TCA will then be given an opportunity to submit a written statement to the SoS in response to this notice.

## **The appeals process: stages, requirements and deadlines**

15. The Department recognises that there is benefit to all interested parties in determining applications promptly. The Department will therefore be aiming to process appeals within as short a time period as possible consistent with a fair and thorough consideration of the available evidence. In order to achieve this, the Department will require interested parties to co-operate in providing the information which is needed to reach a determination. For this reason, the Department reserves the right to enforce timescales relating to appeals:

- Deadline for lodging 1985 Act appeals of 56 days<sup>1,2</sup> beginning with the date provided for in relation to the Participation Notice (this may be a date before the commencement date of service);
- Deadline for 2000 Act appeals 56 days from the date the arrangements, or variations, come into operation;
- Deadline of at least 14 days for responding to any request by the Department for supplementary information to clarify a position. The precise deadline will be specified by the Department at the time of requesting further information.

16. Applicants should note that the 56 day window period specified in Section 98(4)(a) of the Transport Act 1985 may not necessarily coincide with the 56 day window for making an application under Section 150(4) of the Transport Act 2000. Applicants are required to comply with each of these respective notice periods in so far as they are relevant to the respective applications being made.

17. Where separate applications to the SoS have been lodged by an operator regarding the discretionary elements under the Transport Act 1985 and the mandatory concession under the Transport Act 2000 in the same Scheme, the decision maker may consider both elements together and reach a single determination regarding the reimbursement arrangements in the Scheme.

18. Once an application is submitted, the Department will acknowledge it and consider whether it meets the requirements set out above. The

19. Some applications request that a modification is made to the way that reimbursement is calculated while others object to a point of principle in relation to the Scheme. For these cases to be considered it is important that the decision maker has access to key information in order to reach a determination.

20. For most applications, the Department will ask the applicant and authority to complete a pro forma setting out all the key information required by the decision maker to assess the grounds of the application. Both parties are strongly encouraged to complete this document to the best of their abilities, including providing source data to support input values used that differ to those recommended in the Reimbursement guidance. If either party fails to complete the pro forma adequately and within the timetable, the decision maker may nevertheless proceed with the determination of the application, taking account of the quality and depth of the evidence that has been provided.

21. If the appeal does not concern the amount of reimbursement, but is on points of principle, or other problems with the Scheme, each side may not need to complete all sections of the pro forma. For example if the appeal relates to the calculation of the average fare in the year, but not the revenue reimbursement rate, then only the fare related elements of the pro forma are relevant. Applicants should state this clearly when lodging the appeal.

22. The Department is happy to answer queries about the pro forma. Questions should include the word 'appeal' in the title and be sent by email to:

[concessionaryfares@dft.gsi.gov.uk](mailto:concessionaryfares@dft.gsi.gov.uk)

23. In the past, some TCAs have chosen not to respond to requests from the Department. Given the importance of concessionary travel reimbursement to local authority finances, the Department reserves the right to inform the District Auditor of any failure to comply with this request.

**24. Failure by the applicant to submit the required information within the given deadlines could result in the application being rejected.**

**25. Failure by one party to the appeal to submit complete information within the deadline could negatively influence its position since the determination may have to be reached on the basis of the information supplied by the other party and any other relevant information sources.**

26. The pro forma for this year's appeals will be supplied in an electronic format. The pro forma will require interested parties to provide information in a number of categories and interested parties should ensure that the pro forma is fully completed and that in particular:

- Disputed issues are clearly signalled in the pro-forma and are consistent with the Application Notice as submitted;
- Source data and calculations to support use of local values are presented in a clear and easily understandable format (such as a spreadsheet).
- Information on which routes are operated by the bus operator and which of these have been used for which aspect of the reimbursement calculation.
- Where applicable provide copies of the Reimbursement Calculator used to produce the figures submitted.

27. It is recommended that all fields be filled. **Where information requested in the pro forma is not provided the SoS will be under no obligation to clarify and will usually rely on her judgement based on what information is available.**

28. If interested parties are not using the Department's Reimbursement Calculator (RC) to estimate reimbursement, they should still fill in the relevant sections on the pro forma and provide clearly presented details of the data and methodology to support the use of an alternative method on separate spreadsheets for scrutiny by the Department's economists.

29. The Department's pro forma includes a section for comments by the other party to the appeal. A completed pro forma should therefore be copied by operators to the relevant TCA (and vice versa) and each party then has at least 14 days to complete the relevant comments section on the other party's pro forma and forward those comments to the Department.

30. **Unsolicited submissions from applicants not forming part of the initial application, or not made in response to a specific request by the SoS, will not generally be considered.**

31. The 1986 Regulations state that the TCA should submit a written statement of any matters thought to be relevant to the appeal within 28 days of the application notice. The Department considers that the TCA should provide its written statement in response to the Operator's application at the time of submitting its own completed data pro forma and supporting documents. In the 2011 Regulations this statement is to be provided at the request of the SoS and will then give 28 days for submission of the written statement. At that time the TCA should also submit the Arrangements for Reimbursement or similar documents describing the Scheme. After that any further supplementary information would be at the specific request of the SoS, otherwise it might not be considered.

32. Failure to present supplementary information in a clearly referenced format will lead to significant processing time by the Department and can delay the reaching of a determination. The Department considers that the pro forma should, in the vast majority of cases, in itself contain sufficient

33. The Department reserves the right to ask for additional clarifications as required, for which a deadline for reply will apply (of not less than 14 days), but there is no guarantee that this right will be exercised.

34. The SoS may appoint independent decision makers to determine the applications on her behalf, in line with the provisions of section 100(5) of the 1985 Act and section 150(6)(b) of the 2000 Act. The Department provides economic and legal support to decision makers.

35. The decision makers will base their determinations on the information provided to the Department by the applicant Operator and TCA within the prescribed period for submissions, as well as any other relevant information.

36. The determination of a successful application will be expressed in terms of required modifications to the published Scheme. In her determinations, the SoS (or independent decision maker on her behalf) can adjust the revenue reimbursement rates or additional costs payments being offered by the Travel Concession Authority both upwards and downwards

37. The determination of an application, whether successful or unsuccessful, will set out the key elements of the decision and provide sufficient basis to explain the conclusions reached.

38. It should be noted that for the purposes of considering applications for modification to a Scheme, the Department recognises no difference between an "interim" Scheme and a "final" published Scheme.

## **Charges for Appeals**

39. Parties should be aware that there is provision in legislation for the SoS to require the applicant or the TCA, or both of them, to pay such a sum as she may determine towards the expenses incurred by her in connection with the determination of the application.

40. The SoS will decide on a case by case basis whether to levy such charges taking into account the reasonableness of doing so and the circumstances of each appeal. It is expected that charging will only be undertaken in limited circumstances, but could, for example, be applied when the bulk of the work to determine an application has been completed and that application is subsequently withdrawn.

## **Oral hearings**

41. The SoS may invite interested parties to attend an oral hearing. Although there is no provision in law for the interested parties to request oral

## **Future arrangements**

42. The determinations reached by the decision maker are based on the Department's guidance in effect at the time of appeal, information submitted by parties and other relevant sources of information available which can be related to a given scheme and year.

43. A determination from a previous year should therefore not necessarily be used as a basis for the following year's reimbursement arrangements.

44. The SoS has no powers to re-open an appeal once determined. If there is an error or omission the SoS may issue a correction or clarification.

## **Publication of the outcome**

45. The Department may publish summaries of determinations issued throughout the round of appeals in any particular period but in anonymised form so that individual Operators are not identified.

46. The Department has published a summary of 2011/12 Concessionary Travel Appeal Determinations which, although in anonymised form, may provide interested parties with information on the interpretation of specific elements of the Guidance. This can be found at

<http://www.dft.gov.uk/publications/concessionary-travel-determinations>

47. If there are requests for further detail of individual determinations, for example under the Freedom of Information (FOI) Act, the Department will write to the Operator and TCA party to the relevant appeal so that they have a chance to comment on the appropriateness of making the contents of the determination, or the economic analysis that preceded it, available to the public, subject to any restrictions on the release of commercial data.

Concessionary Travel  
Buses & Taxis Division  
Department for Transport  
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### Footnotes

<sup>1</sup> References to 'days' throughout this document refer to calendar rather than working days.

<sup>2</sup> Under subsection 98(4A) of the Transport Act 1985 as amended.