

*Draft Order laid before the Scottish Parliament under section 52(3) of the Transport (Scotland) Act 2005, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2006 No.**

**TRANSPORT**

**The National Bus Travel Concession Scheme for  
Older and Disabled Persons (Scotland) Order 2006**

*Made* - - - - 2006  
*Coming into force* - - 1st April 2006

The Scottish Ministers, in exercise of the powers conferred by sections 40(1), (3), (4) and 52(4) of the Transport (Scotland) Act 2005<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 52(3) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1. This Order may be cited as the National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Order 2006 and shall come into force on 1st April 2006.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Transport (Scotland) Act 2005;

“eligible journey” has the same meaning as in section 40(7) of the Act;

“eligible person” and “eligible service” have the meanings given to them by virtue of section 40(7) of the Act;

“Notices and Proceedings” means information published by the traffic commissioner under section 5 of the Public Passenger Vehicles Act 1981<sup>(2)</sup>;

“operator” means an operator of eligible services and includes any person who is prospectively such an operator;

“payment period” means the period to which a reimbursement payment relates;

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(1) 2005 asp 12.

(2) 1981 c. 14. Section 5 was substituted by section 3(2) of the Transport Act 1985 (c. 67).

“reimbursement arrangements” means the arrangements for reimbursement as described in article 12(1) and (2) of this Order;

“the Scheme” means the National Bus Travel Concession Scheme for Older and Disabled Persons provided for by this Order;

“shadow fare” means the adult single fare foregone for the eligible journey as derived from the operator’s fare table;

“traffic commissioner” means the traffic commissioner for the Scottish Traffic Area appointed under section 4 of the Public Passenger Vehicles Act 1981;

“travel card” means a card for the purposes of the Scheme issued to eligible persons by such persons as the Scottish Ministers determine; and

“travel concession” has the same meaning as in section 40(7) of the Act.

(2) Any reference in this Order to estimates or calculations made by the Scottish Ministers in relation to reimbursement payments is a reference to estimates or calculations made by the best practical method available to the Scottish Ministers.

### **The Scheme**

3. The Scottish Ministers hereby make a national travel concession scheme for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys.

### **Extent of the Scheme**

4. The Scheme shall operate throughout Scotland and the Scottish Ministers shall administer the Scheme.

### **Rate of travel concession**

5. The rate of travel concession in the Scheme shall be a waiver of the fare (within the meaning of the Public Passenger Vehicles Act 1981<sup>(3)</sup>) for the journey applicable to an adult who is not an eligible person.

### **Conditions for operators**

6.—(1) Operators to whom this Scheme applies shall provide travel concessions to eligible persons travelling on eligible services on eligible journeys on presentation by the eligible person of a valid travel card, in accordance with the provisions of this Order.

(2) Travel concessions shall be provided at all times on presentation of a valid travel card provided that the service is an eligible service.

### **Operators to whom the Scheme applies**

7. The Scottish Ministers may admit to the Scheme any operator who registers eligible services with the traffic commissioner in terms of section 6 of the Transport Act 1985 and whose eligible services are shown in Notices and Proceedings, or who has otherwise commenced operation of an eligible service.

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(3) Section 82 includes a definition of “fare” which includes sums payable in respect of a contract ticket or a season ticket.

### **Admission to the Scheme**

8.—(1) Where the Scottish Ministers admit an operator to the Scheme they shall issue a notice of admission to the operator requiring them to provide travel concessions in accordance with the Scheme.

(2) The admission date for the Scheme will be—

(a) for existing services, 1st April 2006; or

(b) for new services, either—

(i) the date when the service begins; or

(ii) the date specified in the notice of admission to the Scheme, provided that 7 days has elapsed from the notice being issued.

(3) If the Scottish Ministers refuse to admit an operator to the Scheme the operator concerned may appeal against that decision within the period of 56 days beginning with the day on which the operator was notified of the decision.

(4) Where an operator makes an appeal under paragraph (3), the appeal shall be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(5) The assessment panel may either—

(a) determine that the operator is admitted to the Scheme; or

(b) determine that the operator is refused admission to the Scheme.

(6) The assessment panel shall send a copy of their determination to the operator and to the Scottish Ministers.

### **Compulsory participation notices**

9.—(1) An operator of an eligible service may seek to withdraw from the Scheme provided that the operator gives 56 days notice in writing to the Scottish Ministers of their intention to withdraw.

(2) The Scottish Ministers on receiving notice under paragraph (1) may serve the operator with a compulsory participation notice, requiring the operator to participate in the Scheme, and that compulsory participation notice shall have effect until any appeal under paragraph (4) is determined.

(3) If an operator is served with a compulsory participation notice, the operator shall comply with the terms of that notice from the date the notice is served.

(4) An operator who has been served with a compulsory participation notice may on cause shown appeal against that notice within the period of 56 days beginning with the day on which the operator was served with that notice.

(5) Where an operator makes an appeal under paragraph (4), the appeal shall be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(6) The assessment panel may either—

(a) determine that it is appropriate for the operator to continue to participate in the Scheme and the operator shall participate in the Scheme in accordance with the provisions of this Order; or

(b) determine that it is not appropriate for the operator to continue to participate in the Scheme under the existing conditions of the Scheme and may propose modifications to the reimbursement arrangements in relation to an eligible service or services provided by the operator.

(7) The assessment panel shall send a copy of their determination to the operator and to the Scottish Ministers.

(8) On receiving a determination of the assessment panel the Scottish Ministers shall—

- (a) where a determination is made under article 9(6)(a), set out in writing to the operator the eligible service or services for which the compulsory participation notice will be effective; or
- (b) where a determination is made under article 9(6)(b), either cancel the compulsory participation notice or modify the reimbursement arrangements if so proposed by the panel.

### **Exclusion from the Scheme**

**10.**—(1) The Scottish Ministers may exclude an operator of an eligible service from the Scheme in relation to any eligible service.

(2) If the Scottish Ministers exclude an operator from the Scheme the operator concerned may appeal against that decision within the period of 56 days beginning with the day on which the operator was notified of the decision.

(3) Where an operator makes an appeal under paragraph (2), the appeal shall be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(4) The assessment panel may either—

- (a) determine that the operator shall continue to participate in the Scheme; or
- (b) determine that the operator is excluded from the Scheme in relation to any eligible service.

(5) The assessment panel shall send a copy of their determination to the operator and to the Scottish Ministers.

### **Information to be provided by operators**

**11.**—(1) An operator shall provide the Scottish Ministers with the following information for each eligible service:—

- (a) a table showing the name and number of each fare stage and the adult single fare charged between stages;
- (b) on request by the Scottish Ministers, a timetable; and
- (c) a note of any changes to those timetables requested by the Scottish Ministers under paragraph (1)(b), at least 7 days before any changes are due to take effect.

(2) The operator shall notify the Scottish Ministers of any changes to the adult single fare for an eligible service on the Monday following the fare revision, or on the date of the fare revision if that is a Monday.

(3) An operator shall provide the Scottish Ministers with information as to either—

- (a) the numbers of passengers carried at adult single fares, the revenue realised from these adult single fares, the average adult single fare and the numbers of eligible persons carried; or
- (b) the number of eligible persons carried, the boarding and alighting stage by shadow fare or survey of each eligible person carried in agreed format and the adult single fare foregone for each eligible person carried.

(4) Any information to be provided in accordance with this article shall be provided in such a format and at such intervals, of not less than 4 weeks, as the Scottish Ministers shall determine.

(5) Ticketing equipment used by an operator must be approved by the Scottish Ministers and shall be capable of providing such information as will allow the Scottish Ministers to audit the accuracy of claims for reimbursement.

(6) Any person duly authorised by the Scottish Ministers shall, on presentation of valid identification, have a right of access to an operator's records and vehicles for unspecified periods, without prior notification and without charge for the purpose of obtaining or verifying any information to be provided under this article.

### **Reimbursement of operators**

**12.**—(1) It is to be an objective (but not a duty) of the Scottish Ministers to provide that operators are financially no better and no worse off as a result of their participation in the Scheme, taking account of the costs (including a reasonable profit) of a well-run undertaking that is adequately equipped with the means to provide the eligible service.

(2) Reimbursement of operators shall be calculated on a basis that takes account of the adult single fare for each eligible journey on an eligible service made by an eligible person within the capped level of funding specified for the financial year as contained in the agreement between the Scottish Ministers and an association representative of the passenger transport industry dated 27th October 2004<sup>(4)</sup>.

(3) The value of the adult single fare to be used for reimbursement calculations shall be the value set by the operator for the purposes of reimbursement under the Scheme and as agreed with the Scottish Ministers for the eligible journey concerned.

(4) In agreeing the value of the adult single fare the operator and the Scottish Ministers shall have regard to the value specified in the operator's fare table.

(5) Any dispute between the Scottish Ministers and an operator as to the value of the adult single fare to be used for reimbursement calculations shall be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(6) The assessment panel may either accept or reject the value of the adult single fare and shall provide reasons for their determination.

(7) The assessment panel shall send a copy of their determination to the operator and to the Scottish Ministers.

### **Payment of reimbursement**

**13.**—(1) There shall be 13 payment periods at regular intervals in the financial year.

(2) Subject to paragraph (3), reimbursement payments equating to 90% of the amount estimated by the Scottish Ministers to be due to the operator in respect of the relevant payment period shall be paid by the Scottish Ministers on the first working day of that period.

(3) Reimbursement payments under paragraph (2) shall not be paid until an operator submits to the Scottish Ministers the information required by paragraphs (1) and (2) of article 11.

(4) The balance of each reimbursement payment shall be paid by the Scottish Ministers, subject to any adjustments shown to be necessary based on the information required by article 11 submitted by the operator for the relevant payment period, not later than 3 months after the end of that period.

(5) Supplementary reimbursement payments shall be paid by the Scottish Ministers where—

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(4) This refers to the outline agreement between the Scottish Ministers and the Confederation of Passenger Transport relating to the Unrestricted National Free Bus Scheme for Older and Disabled People dated 27th October 2004. A copy of this is available for inspection on the Transport Scotland website at [www.transportscotland.gov.uk/defaultpage1221cde0.aspx?pageID=40](http://www.transportscotland.gov.uk/defaultpage1221cde0.aspx?pageID=40).

- (a) the Scottish Ministers have not made balancing reimbursement payments within 3 months of the end of the relevant payment period, provided that the operator submitted the original claim within 4 weeks of the end of the relevant payment period; and
  - (b) the Scottish Ministers have not informed the operator that they are disputing the claim.
- (6) If the amount of any reimbursement payment made in accordance with paragraph (2) in respect of any payment period exceeds the total amount of that payment found to be payable in respect of that period, the Scottish Ministers may deduct the amount of the excess from the reimbursement payments due to that operator in respect of any subsequent payment period.
- (7) Where an operator fails to supply the information required under article 11, the reimbursement payments due in respect of that and future periods may be withheld, in whole or in part, until the information required has been made available and verified.
- (8) Any claims for reimbursement made by operators more than 3 years after the end of the relevant payment period will not be considered for reimbursement.
- (9) Any person duly authorised by the Scottish Ministers shall have a right of access to an operator's records, relevant to the calculation of reimbursement payments, without prior notification for the purpose of validating claims for reimbursement.

#### **Verification**

**14.** Information as to the adult single fare used in an operator's reimbursement claim and any information required by article 11(3) shall be verified by compliance audits and surveys and by means of any other verification activity agreed between the operator and the Scottish Ministers.

#### **Travel cards**

- 15.—**(1) An eligible person may make an application to the Scottish Ministers for a travel card in order to obtain travel concessions in accordance with the Scheme.
- (2) Application forms for the travel card shall be issued at such places as the Scottish Ministers, local authorities and their agents determine.
- (3) A travel card for the purposes of the Scheme shall be issued to eligible persons and may only be used by the eligible person named on the card.
- (4) The Scottish Ministers may withdraw or suspend a travel card—
- (a) if an eligible person knowingly allows their travel card to be used by another person; or
  - (b) in such other circumstances as they may determine.

St Andrew's House,  
Edinburgh  
2006

A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision for a National Bus Travel Concession Scheme for Older and Disabled Persons (“the Scheme”) to come into force on 1st April 2006. This Order is made under section 40 of the [Transport \(Scotland\) Act 2005 \(asp 12\)](#) which allows the Scottish Ministers to make national travel concession schemes.

Article 3 makes the Scheme for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys.

Article 4 provides that the Scheme is to operate throughout Scotland and that the Scottish Ministers shall administer the Scheme.

Article 5 provides for the rate of travel concession in the Scheme to be a waiver of the normal adult fare.

Article 6 outlines the conditions for operators to whom the Scheme applies.

Article 7 details which operators the Scottish Ministers may admit to the Scheme.

Article 8 provides for matters relating to admission to the Scheme. Where the Scottish Ministers refuse to admit an operator to the Scheme then the operator may appeal against that decision.

Article 9 provides that an operator may seek to withdraw from the Scheme provided 56 days written notice is given to the Scottish Ministers. On receiving such a notice the Scottish Ministers may serve the operator with a compulsory participation notice, requiring the operator to participate in the Scheme. An operator may appeal against a compulsory participation notice on cause shown.

Article 10 provides that the Scottish Ministers may exclude an operator of an eligible service from the Scheme in relation to any eligible service. The operator concerned may appeal against the decision to exclude them from the Scheme.

Article 11 details the information that operators must provide to the Scottish Ministers in terms of the Scheme.

Article 12 makes provision as to the reimbursement of operators participating in the Scheme and the basis of reimbursement calculations.

Article 13 details how reimbursement will be paid to operators.

Article 14 provides that information as to the adult single fare used in reimbursement claims shall be verified by compliance audits and surveys and by means of any other verification activity agreed between the operator and the Scottish Ministers.

Article 15 makes provision as to travel cards for the purposes of the Scheme.