

2009 No. 3243

PUBLIC PASSENGER TRANSPORT, ENGLAND

**The Quality Contracts Schemes (QCS Boards) (England)
Regulations 2009**

<i>Made</i> - - - -	<i>7th December 2009</i>
<i>Laid before Parliament</i>	<i>14th December 2009</i>
<i>Coming into force</i> - -	<i>11th January 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 126A(5) and (10), 126B(5) and (6), 126E(1) to (3), 133 and 160(1) of the Transport Act 2000(a).

The Secretary of State has consulted the Administrative Justice and Tribunals Council in accordance with paragraph 24(1) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(b).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Quality Contracts Schemes (QCS Boards) (England) Regulations 2009 and come into force on 11th January 2010.

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

Interpretation

2.—(1) In these Regulations—

“board” means a QCS board(d); and

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- (a) 2000 c. 38. Sections 126A, 126B and 126E of the Transport Act 2000 were inserted by sections 22, 23 and 25 respectively of the Local Transport Act 2008 (c. 26). Section 133 was amended by section 41 of that Act.
- (b) 2007 c. 15. The effect of paragraph 24(1) of Schedule 7 to this Act is that the power of the Secretary of State to make procedural rules for any listed tribunal can be exercised only after consultation with the Administrative Justice and Tribunals Council. The traffic commissioners for areas in England and Wales are listed tribunals for the purposes of paragraph 24(1) by virtue of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (S.I. 2007/2951). The provisions relating to QCS boards in the Transport Act 2000 impose procedural requirements on the senior traffic commissioner, and on traffic commissioners designated to chair a QCS board.
- (c) The requirement under section 126C of the Transport Act 2000 for proposed schemes to be submitted to a QCS board applies only to proposed schemes for areas in England. The power to make regulations under sections 126A, 126B and 126E of the Transport Act 2000 is vested solely in the Secretary of State. The power to make regulations under section 133 of the Transport Act 2000 rests with the “appropriate national authority”, as defined in section 162(1) of that Act, and it is for the Welsh Ministers to make regulations as respects Wales.
- (d) By virtue of section 162(1) of the Transport Act 2000, the term “QCS board” is to be read in accordance with section 126A(1) of that Act. The definition was inserted into section 162(1) by section 22(2) of the Local Transport Act 2008.

“scheme” means a quality contracts scheme(a).

(2) References in these Regulations to numbered sections are, except where a contrary indication appears, references to the corresponding numbered sections in the Transport Act 2000.

(3) Any period of days prescribed in these Regulations is to be calculated excluding any day which is Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(b).

Procedure for giving written notice

3.—(1) Where, by virtue of any provision in these Regulations, notice is required to be given in writing to any person, except where the only requirement is for the notice to be published in a newspaper, notice may be given by—

- (a) delivering it to the person by hand;
- (b) delivering it by post to the proper address of the person;
- (c) leaving it at the proper address of the person;
- (d) transmitting it, subject to paragraph (2), in electronic format to the proper address of the person; or
- (e) any other means as may be agreed between the person giving notice and the intended recipient.

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

- (a) has indicated to the person giving notice, and has not subsequently withdrawn the indication, that receipt of notices in electronic format will be accepted; and
- (b) has provided the person giving notice with the fax number, e-mail address or other electronic address to which such notices may be sent.

(3) For the purposes of this regulation—

- (a) the proper address of a person who has provided the person giving notice with an address for postal service or hand delivery is that address in relation to postal service or hand delivery;
- (b) the proper address of a person who has provided the person giving notice with an electronic address described in paragraph (2)(b) is that address in relation to transmission in electronic format;
- (c) the proper address of a person who has provided the person giving notice with an address for the service of notices by any other means is that address in relation to such other means; and
- (d) the proper address of a person to whom sub-paragraphs (a) to (c) do not apply is—
 - (i) in the case of a corporation, the registered or principal office of the corporation; and
 - (ii) in any other case, the last known address of the person.

Designation of Commissioner

4.—(1) The prescribed period for the purposes of section 126A(5)(a) and (b) (period within which Commissioner(c) to be designated and authority notified) is 28 days, beginning with the date on which a notice sent by the authority or authorities by virtue of section 125(1)(d) (notice of proposed scheme)(d) is received by the senior traffic commissioner.

(2) Notice of the designation must be given to the authority or authorities in writing.

(a) By virtue of section 162(1) of the Transport Act 2000, the term “quality contracts scheme” is to be construed in accordance with section 124(3) of that Act. This definition was amended by section 19(1) and (4) of the Local Transport Act 2008.

(b) 1971 c. 80.

(c) The term “Commissioner” is defined in section 126A(3)(a) of the Transport Act 2000.

(d) Section 125 of the Transport Act 2000 was amended by section 20 of the Local Transport Act 2008.

(3) The prescribed period for the purposes of section 126A(5)(c) (period within which notice of designation must be published) is 14 days beginning with the date on which written notice was given by virtue of paragraph (2).

(4) Notice of the designation must be published—

- (a) in at least one newspaper circulating in the area to which the proposed scheme relates; and
- (b) in such other ways as the senior traffic commissioner considers appropriate for the purpose of informing operators of local services^(a) and other interested persons about the designation.

(5) Notice given or published by virtue of section 126A(5)(b) or (c) must—

- (a) include reference to the right of any person to request advice from the board under section 126B(2) (advice by boards or their Commissioners) about matters of a procedural nature; and
- (b) include the information necessary to enable any person wishing to make such a request to contact the board for advice.

Designation by the Secretary of State

5.—(1) If, by virtue of section 126A(9) (inability of senior traffic commissioner to act), the Secretary of State discharges the duties of the senior traffic commissioner under section 126A(5), regulation 4 applies to the Secretary of State as it applies to the senior traffic commissioner, with the modification specified in paragraph (2).

(2) The modification is that the reference in regulation 4(1) to the date on which a notice sent by the authority or authorities by virtue of section 125(1)(d) is received is to be read as a reference to the date on which the Secretary of State becomes aware—

- (a) that notice has been given by the authority or authorities to the senior traffic commissioner by virtue of section 125(1)(d), and
- (b) that the senior traffic commissioner is unable to discharge the duties conferred by virtue of section 126A(5),

whichever is the later.

Designation of other board members

6.—(1) The senior traffic commissioner must, no later than the date prescribed in paragraph (2), designate the persons who are to be members of a board by virtue of section 126A(3)(b) (appointment of board members from panel).

(2) The date is—

- (a) 28 days before the date specified in accordance with section 125(1A)(f) (date by which written responses to consultation document must be submitted to authority), or
- (b) 28 days after the designation of the Commissioner by virtue of section 126A(5)(a),

whichever is the later.

(3) In designating the persons who are to be members of a board in accordance with this regulation the senior traffic commissioner, having regard to the matters described in paragraph (4), must select the persons whom the senior traffic commissioner considers most appropriate in all the circumstances of the particular case.

(4) The matters are—

(a) By virtue of section 162(3) of the Transport Act 2000, the term “local service” has the meaning given in section 2 of the Transport Act 1985 (c. 67).

- (a) the range of expertise needed by board members, taken together, to carry out the functions of the board effectively in relation to the proposed scheme in respect of which the board is to be constituted;
- (b) the availability of potential board members to perform the expected volume of work in the period between the designation of board members and the expected conclusion of the work of the particular board in question;
- (c) the ability of potential board members to act impartially in respect of any particular proposed scheme; and
- (d) such other matters as the senior traffic commissioner considers appropriate.

(5) The senior traffic commissioner must, within the period prescribed in paragraph (6), give notice of the designation—

- (a) in writing to the authority or authorities who gave notice by virtue of section 125(1)(d);
- (b) in at least one newspaper circulating in the area to which the proposed scheme relates; and
- (c) in such other ways as the senior traffic commissioner considers appropriate for the purpose of informing operators of local services and other interested persons about the designation.

(6) The period is 14 days beginning with the date on which members are designated in accordance with paragraph (1).

(7) If the senior traffic commissioner is unable to carry out the functions assigned by virtue of this regulation and regulation 7, and no other traffic commissioner has been appointed to act as deputy for the senior traffic commissioner under section 4A(5) of the Public Passenger Vehicles Act 1981 (deputy for the senior traffic commissioner)(a), those functions are to be carried out by the Commissioner designated by virtue of section 126A(5)(a).

Incapacity of member of board

7.—(1) If, at any time after the constitution of a board, a member of the board becomes unable to discharge the duties assigned to members of the board the senior traffic commissioner may, if the senior traffic commissioner considers it appropriate to do so, appoint a replacement member.

(2) In appointing a person to replace a member of the board appointed by virtue of section 126A(3)(b), the senior traffic commissioner must comply with regulation 6(3).

(3) The senior traffic commissioner—

- (a) must, where the replacement member is the Commissioner, give notice of the appointment within the period and in the manner prescribed in regulation 4(2) to (4); and
- (b) must, where the replacement member is a member other than the Commissioner, give notice of the appointment within the period and in the manner prescribed in regulation 6(5) and (6).

Advice by boards

8.—(1) This regulation applies if the board gives advice of a procedural nature in accordance with section 126B.

(2) Subject to regulation 14, as soon as reasonably practicable after giving the advice referred to in paragraph (1), the Commissioner must publish a notice in accordance with this regulation.

(3) The notice referred to in paragraph (2)—

- (a) must contain a statement that advice has been given by virtue of section 126B(2);
- (b) must identify the person to whom the advice has been given;

(a) 1981 c. 14. Section 4A was inserted by section 3(1) of the Local Transport Act 2008.

- (c) must, where the request has been made by a person other than the authority or authorities proposing to make the scheme, be given to the authority or authorities;
 - (d) must be published in at least one newspaper circulating in the area to which the proposed scheme relates; and
 - (e) must be published in such other ways as the Commissioner considers appropriate for the purpose of informing operators of local services and other interested persons that advice has been given in accordance with section 126B(2).
- (4) The notice referred to in paragraph (2) must—
- (a) contain the request for advice and the advice given; or
 - (b) summarise the request for advice and the advice given and state where or how a copy of the request and the advice may be inspected or obtained.

Request for board to perform functions

9.—(1) The board must acknowledge receipt of a request from an authority or authorities under section 126C(4) (request for board to begin consideration of proposed scheme)(a) within 14 days, beginning with the date on which the request is received, by issuing a notice to the authority or authorities in accordance with paragraph (2).

- (2) The notice must be issued in writing and include—
- (a) the date on which the request was received by the board; and
 - (b) the date by which the board expects to give notice, in accordance with section 126D(5) (board to give notice of opinions, recommendations and reasons)(b), to the authority or authorities proposing to make the scheme.

Further request for board to perform functions

10.—(1) This regulation applies if the authority or authorities send the board a further request under section 126C(4), by virtue of section 126C(6) (further request following modification of proposed scheme).

- (2) The authority or authorities must send with the further request—
- (a) information about any further consultation which the authority or authorities have undertaken in respect of the modifications to the proposed scheme;
 - (b) copies of any written responses received from persons consulted about the modifications; and
 - (c) information about any representations made orally at meetings or other events held by the authority or authorities in respect of the modifications.

(3) A further request from an authority or authorities must be acknowledged by the board in accordance with regulation 9.

Consideration of proposed scheme by boards: evidence

11.—(1) This regulation applies where a request has been sent to the board in accordance with section 126C(4).

- (2) The board may invite—
- (a) the authority or authorities proposing to make the scheme, and
 - (b) any person consulted in accordance with section 125(3) (persons to be consulted about proposed scheme),

to present evidence to the board in the manner described in paragraph (3).

(a) Section 126C of the Transport Act 2000 was inserted by section 24 of the Local Transport Act 2008.
 (b) Section 126D of the Transport Act 2000 was inserted by section 24 of the Local Transport Act 2008.

(3) The board may invite the persons described in paragraph (2) to do either or both of the following—

- (a) submit written evidence to the board,
- (b) give oral evidence to the board,

on such matters as the board may specify.

(4) Where an invitation is given by virtue of paragraph (3)(a) to any person other than the authority or authorities proposing to make the scheme the recipient of the invitation must, if submitting evidence to the board, send a copy of the evidence to the authority or authorities proposing to make the scheme.

(5) Following publication of a request in accordance with section 126C(5)(a) (publication of request for board to begin consideration of proposed scheme) any person may request an opportunity to present oral evidence to the board.

(6) A request under paragraph (5) must—

- (a) be submitted to the board within 14 days beginning with the date on which the request is published in accordance with section 126C(5)(a); and
- (b) contain a summary of the oral evidence which the person wishes to present.

(7) Subject to regulation 12, if a request to present oral evidence is submitted in accordance with paragraph (5) by—

- (a) a person operating local services in the area to which the proposed scheme relates,
- (b) the authority or authorities proposing to make the scheme, or
- (c) a person who was not consulted under section 125(3) but who, in the opinion of the board following submission of a request under paragraph (5), ought to have been so consulted,

the board must hold an oral evidence session.

(8) Where a request to present oral evidence is submitted by a person other than a person described in paragraph (7), the board may hold an oral evidence session.

(9) Where more than one request to present oral evidence is submitted to the board in relation to any proposed scheme, the board may hold a single oral evidence session in response to those requests.

(10) Where the board is to hold an oral evidence session the board must—

- (a) give written notice of the date, time and location of the oral evidence session to—
 - (i) any person from whom the board has invited evidence in accordance with paragraph (2); and
 - (ii) any person who has made a request in accordance with paragraph (5); and
- (b) give notice of the date, time and location of the oral evidence session in at least one newspaper circulating in the area to which the proposed scheme relates.

(11) The board may determine the procedure to be followed in an oral evidence session and in particular may—

- (a) determine the way in which oral evidence is to be presented;
- (b) impose time limits on the presentation of oral evidence;
- (c) direct, where two or more parties make a request to submit evidence on a particular issue, that evidence is to be submitted by one party only on behalf of all of them; and
- (d) decline to hear evidence or submissions which could have been submitted to the authority or authorities proposing to make the scheme in response to the consultation document published by virtue of section 125(1)(a) (requirement to publish consultation document).

(12) Subject to regulation 14, oral evidence sessions must be held in public.

Consideration of modified scheme by board

12.—(1) This regulation applies if—

- (a) an oral evidence session has been held by virtue of regulation 11; and
- (b) a further request is sent to the board under section 126C(4), by virtue of section 126C(6), after the oral evidence session described in sub-paragraph (a) has taken place.

(2) The board may invite—

- (a) the authority or authorities proposing to make the scheme,
- (b) any person consulted in accordance with section 125(3), or
- (c) any other person who presented oral evidence to the board by virtue of regulation 11,

to present evidence to the board in the manner described in paragraph (3).

(3) The board may invite the persons described in paragraph (2) to do either or both of the following—

- (a) submit written evidence to the board,
- (b) give oral evidence to the board,

on such matters as the board may specify in the invitation in relation to the proposed scheme as modified.

(4) Where this regulation applies, regulation 11(7) (obligation to hold oral evidence session) does not apply.

Time limits

13.—(1) A board should normally publish its report^(a) under section 126D(5) within the period prescribed in paragraph (2) or, as the case may be, paragraph (3).

(2) Except where paragraph (3) applies, the period is—

- (a) 42 days beginning with the date on which the board receives a written request under section 126C(4),
- (b) 42 days beginning with the date on which the board receives a further written request under section 126C(4), by virtue of section 126C(6), or
- (c) 56 days beginning with the date on which the board receives the information prescribed in section 126C(2) (information to be sent to board after consultation),

whichever is the period which ends last.

(3) Where—

- (a) the board has published a report in accordance with section 126D(5) in response to a request under section 126C(4), and the authority or authorities proposing to make the scheme submit a further request under that subsection, by virtue of section 126C(6), for the board to exercise its functions in relation to the proposed scheme as modified,
- (b) the only modifications to the proposed scheme since the publication of the report of the board referred to in sub-paragraph (a) have been made in response to that report, and
- (c) the request under section 126C(4), submitted by virtue of section 126C(6), includes a statement from the authority or authorities proposing to make the scheme that the scheme has been modified only to the extent described in sub-paragraph (b),

the period is 28 days beginning with the date on which the further request is submitted.

(a) The power in section 126E(3) of the Transport Act 2000, under which this regulation is made, is to prescribe the time within which the Secretary of State considers that any QCS board should normally have published its report. Where the board does not publish the report within that time, the Commissioner must follow the procedure prescribed in section 126E(5) and (6) of that Act, which includes a requirement to prepare a statement of the time within which it is expected that the board will publish its report.

Protection of confidential material

14.—(1) This regulation applies to any information—

- (a) submitted or presented to the authority or authorities proposing to make the scheme in response to consultation carried out by virtue of section 125(3),
- (b) sent by the authority or authorities proposing to make the scheme to the board under section 126C(2),
- (c) submitted to the board following an invitation from the board under regulation 11(3)(a) or, as the case may be, regulation 12(3)(a), or
- (d) presented to the board in an oral evidence session held by virtue of regulation 11 or, as the case may be, regulation 12(3)(b),

to which the circumstances described in paragraph (2) apply.

(2) The circumstances are that—

- (a) the person who supplied the information to the authority or authorities proposing to make the scheme or, as the case may be, to the board has requested that the information be held in confidence; and
- (b) a person would not be entitled to the information in response to a request made in accordance with the Freedom of Information Act 2000 by virtue of the application of the exemptions in section 41 (information provided in confidence) or 43 (commercial interests) of that Act(a).

(3) Information to which this regulation applies must not, except in the circumstances prescribed in paragraph (4), be—

- (a) included in any interim report published by the board by virtue of regulation 15,
- (b) included in any report published by the board by virtue of section 126D(5), or
- (c) disclosed to any other party by the authority or authorities proposing to make the scheme or, as the case may be, the board,

without the consent of the person who supplied the information.

(4) Nothing in this regulation affects—

- (a) the obligation imposed on the authority or authorities proposing to make the scheme by section 126C(2);
- (b) the obligation imposed on any person submitting evidence to the board by virtue of regulation 11(4) (obligation to copy evidence to authority);
- (c) any obligation on the authority or authorities proposing to make the scheme or, as the case may be, the board to disclose information in order to comply with an order of a court or a tribunal.

(5) If—

- (a) the board holds an oral evidence session in accordance with regulation 11 or 12(3)(b), and
- (b) information to which the circumstances described in paragraph (2) apply is likely to be disclosed at that session,

the board must exclude persons other than representatives of the authority or authorities proposing to make the scheme from the part of the session at which such information is likely to be disclosed.

(a) 2000 c. 36. The effect of section 41 is that information provided in confidence is exempt from disclosure. The effect of section 43 is that information which would, or would be likely to, prejudice a person's commercial interests is exempt from disclosure, subject to satisfying the public interest test.

Interim reports

15.—(1) Following receipt of a request under section 126C(4) the board may, before publishing a report under section 126D(5), publish an interim report.

(2) Where the board publishes an interim report in accordance with paragraph (1) the board must—

- (a) send a copy of the interim report to the authority or authorities proposing to make the scheme; and
- (b) publish a notice in such manner as the board considers appropriate for the purpose of informing operators of local services and other interested parties that an interim report has been published and stating where or how a copy of the report may be inspected or obtained.

Signed by authority of the Secretary of State

7th December 2009

Sadiq Khan
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about QCS boards, as defined in section 126A(1) of the Transport Act 2000 (“the Act”), constituted to consider proposals by a local transport authority to make a quality contracts scheme.

A quality contracts scheme is a scheme made under the Act in which a local authority determines the local bus network in the area to which the scheme relates. Where such a scheme is in place, local bus services can only (with some exceptions) be provided under quality contracts. A quality contract is a contract made by the local authority under which a particular operator is granted the exclusive right to operate specified services. The provisions relating to quality contracts schemes in the Act were amended by the Local Transport Act 2008.

Before making a scheme, a local transport authority in England must submit its proposals to a specially constituted QCS board. The board must publish an opinion and, where appropriate, recommendations as to whether the proposed scheme satisfies the public interest criteria prescribed in section 124(1) (or, where the scheme is proposed by an Integrated Transport Authority to provide bus services in place of a railway service which has been reduced or discontinued, section 124(1A)) of the Act, and whether the authority has complied with the notice and consultation requirements prescribed in section 125 of the Act.

Regulation 3 makes provision about the giving of written notices, and in particular the circumstances in which electronic communication may be used.

Regulations 4 to 7 prescribe how a QCS board is to be constituted and prescribe time limits for the completion of certain tasks.

Regulation 8 imposes certain requirements on a QCS board in responding to a request for procedural advice. In particular, it places a requirement on the board to make copies of requests for advice, and the advice given, publicly available.

Regulations 9 and 10 prescribe the procedure to be followed when a local transport authority asks the QCS board to consider a proposed scheme. The QCS board must acknowledge the request within 14 days. Where the authority submits a further request for the QCS board to consider a modified scheme, regulation 10 prescribes the information which must be sent with that request.

Regulation 11 enables the board to invite authorities and any person consulted on the proposed scheme to submit written or oral evidence to the board. It also provides that any person may ask the board for an opportunity to present oral evidence. The regulation prescribes the circumstances in which the board is obliged to hold an oral evidence session. The regulation also enables the QCS board to determine the procedure to be followed at an oral evidence session.

Regulation 12 provides that the obligation to hold an oral evidence session does not apply where a modified scheme is submitted to the QCS board for consideration and oral evidence has already been given in respect of the original proposals.

Regulation 13 prescribes the time limits within which the board should normally publish its report about a proposed scheme. If the board does not publish its report within the period prescribed, a statement must be prepared explaining why the report has not been published within that period, and when it is expected to be published (see section 126E(5) and (6) of the Act).

Regulation 14 imposes restrictions on the publication of certain information which is supplied to the local transport authority or to the board in confidence.

Regulation 15 enables the QCS board to publish interim reports.

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

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STATUTORY INSTRUMENTS

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PUBLIC PASSENGER TRANSPORT, ENGLAND

The Quality Contracts Schemes (QCS Boards) (England)
Regulations 2009

£5.50