
STATUTORY INSTRUMENTS

2009 No. 3246

PUBLIC PASSENGER TRANSPORT

**The Quality Contracts Schemes
(Application of TUPE) Regulations 2009**

Made - - - - 7th December 2009
Laid before Parliament 14th December 2009
Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 134B(6) and (7)(a) to (d) and 160(1) of the Transport Act 2000(1).

Citation and commencement

1.—(1) These Regulations may be cited as the Quality Contracts Schemes (Application of TUPE) Regulations 2009.

(2) These Regulations come into force—

- (a) as respects England, on 11th January 2010; and
- (b) as respects Wales, on the date appointed by the Welsh Ministers for the coming into force in Wales of section 44 of the Local Transport Act 2008(2) (in so far as it is not already in force).

Interpretation

2.—(1) In these Regulations—

“the Act” means the Transport Act 2000;

“the 1985 Act” means the Transport Act 1985(3);

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(4);

(1) 2000 c. 38. Section 134B was inserted by section 44 of the Local Transport Act 2008 (c. 26).
(2) By virtue of section 134(1)(c) of the Local Transport Act 2008, the power to make regulations by virtue of amendments made by section 44 is in force as respects Wales. By virtue of section 134(6) of that Act, the power to bring section 44 fully into force as respects Wales rests with the Welsh Ministers.
(3) 1985 c. 67.
(4) S.I. 2006/246. Regulation 11 and paragraph 10(2) of Schedule 1 are amended by S.I. 2009/592, regulation 2. There are other amendments to these Regulations but none is relevant.

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“affected local services” means local services(5) which, on the coming into force of a quality contract(6), the relevant operator would be required by virtue of section 129(1)(b) of the Act (prohibition on provision of local services other than under a quality contract)(7) to cease providing;

“authority” means a local transport authority(8);

“personal data” means data which relate to a living individual who can be identified—

- (a) from those data; or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the local transport authority or authorities;

“principally connected” has the meaning given in regulation 3;

“relevant employee” means an employee whose employment with a relevant operator is principally connected with the provision of affected local services;

“relevant information” has the meaning given in regulation 4;

“relevant operator” means an operator—

- (a) who is operating one or more local services in accordance with particulars registered under section 6 of the 1985 Act(9) (registration of local services), or
- (b) who is eligible under section 6(4) of the 1985 Act(10) to have an application for registration accepted, and has made such an application to the traffic commissioner to register the particulars of one or more local services,

and the local services to which the registration or, as the case may be, application relates have one or more stopping places in the area to which the scheme, or the proposed scheme, relates;

“scheme” means a quality contracts scheme(11); and

“working time”, in relation to an employee, means any period during which an employee is working at the disposal of the employee’s employer and is carrying out the activities or duties assigned by the employer, but does not include any period during which the employee is receiving relevant training, and “relevant training” means any work experience or training for employment provided in accordance with a training course or programme.

(2) The following expressions have the meaning given in TUPE(12)—

- (a) assigned;
- (b) appropriate representatives; and
- (c) employee.

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- (5) 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.
 - (6) By virtue of section 162(1) of the Transport Act 2000, the term “quality contract” has the meaning given in section 124(4) of that Act.
 - (7) Section 129(1)(b) is amended by section 29(1) and (2) of the Local Transport Act 2008.
 - (8) By virtue of section 162(1) of the Transport Act 2000, the term “local transport authority” has the meaning given in section 108(4) of that Act. Section 108(4) is amended by the Local Transport Act 2008, section 77(5) and Schedule 4, Part 3, paragraphs 41 and 42.
 - (9) Section 6 of the Transport Act 1985 has been amended by the Railways Act 2005 (c. 14), section 59(1) and Schedule 12, paragraph 8; the Education and Inspections Act 2006 (c. 40), section 85 and Schedule 10, paragraphs 2(1) to (3); the Local Transport Act 2008, sections 48(1) and (2), 49(1) to (4) and 65(2) to (4). There are other amendments but none is relevant.
 - (10) Section 6(4) of the Transport Act 1985 provides that an application to register a local service may only be accepted from a person who holds an unconditional public service vehicle operator’s licence issued under the Public Passenger Vehicles Act 1981 (c. 14), a permit granted under section 22 of the Transport Act 1985 (community bus permits), or is proposing to use a school bus for the carriage of fare-paying passengers in accordance with section 46(1) of the Public Passenger Vehicles Act 1981.
 - (11) 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.
 - (12) Regulation 2 of TUPE contains definitions of the terms “assigned” and “employee”, and the definition of “appropriate representatives” is contained in regulation 13(3) of TUPE.

(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⁽¹³⁾.

Meaning of “principally connected”

3. For the purposes of section 134B(4) of the Act (organised grouping), a person’s employment is “principally connected” with the provision of affected local services if that person spends, on average, at least half of their working time—

- (a) assigned to the provision of affected local services; or
- (b) assigned to activities connected wholly or mainly to the provision of affected local services.

Meaning of “relevant information”

4.—(1) For the purposes of these Regulations, “relevant information” means—

- (a) relevant employee information; and
- (b) information about the identity of appropriate representatives of relevant employees.

(2) For the purposes of this regulation “relevant employee information”, in relation to a relevant employee, means—

- (a) such of the particulars of employment that an employer is obliged to give to an employee by virtue of section 1 of the Employment Rights Act 1996⁽¹⁴⁾,
- (b) such information about any collective agreements, as defined in section 178(1) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁵⁾, in respect of a relevant employee,
- (c) such information describing the affected local services with which a relevant employee’s employment is principally connected, including the proportion of a relevant employee’s working time assigned to those affected local services, and
- (d) such other information,

as the authority or authorities making the request consider necessary in order to enable any person considering entering into a quality contract, or any other agreement for the provision of local services, to calculate the costs and liabilities likely to arise from the application of TUPE to such a quality contract or agreement.

Request for information by authority before scheme made

5.—(1) This regulation applies to the period between—

- (a) the date on which an authority or authorities give notice under section 125(1) of the Act (consultation and notice requirements) of a proposal to make a scheme; and
- (b) the date on which the authority or authorities make the scheme under section 127 of the Act (making of scheme).

(2) At any time during the period described in paragraph (1) the authority or authorities may issue a request to a relevant operator for such relevant information about relevant employees as may be specified by the authority or authorities.

(3) A request made by virtue of paragraph (2)—

⁽¹³⁾ 1971 c. 80.

⁽¹⁴⁾ 1996 c. 18.

⁽¹⁵⁾ 1992 c. 52.

- (a) must specify the date by which the relevant operator is to respond to the request, which must be not less than 42 days beginning with the date on which the request is issued;
 - (b) must contain sufficient information about the proposed scheme to enable a relevant operator to determine which of their employees would be relevant employees for the purposes of that request;
 - (c) must only request such information as the authority or authorities consider necessary in order to carry out their functions in relation to the proposed scheme; and
 - (d) must not include a request for personal data, except to the extent that such a request is for information about the identity of appropriate representatives.
- (4) If a relevant operator in receipt of a request for information made by virtue of paragraph (2) is of the opinion that the requirement specified in paragraph (3)(b) has not been satisfied, the relevant operator must—
- (a) notify the authority or authorities of that opinion within 14 days of receipt of the request made by virtue of paragraph (2); and
 - (b) describe the information which, in the opinion of the relevant operator, is required in order to satisfy the requirement in paragraph (3)(b).
- (5) If the authority or authorities receive a notice in accordance with paragraph (4)(a) the authority or authorities must—
- (a) supply to the relevant operator such information as seems to the authority or authorities to be necessary, taking into account the description of information supplied in accordance with paragraph (4)(b), in order to enable the relevant operator to respond to the request made by virtue of paragraph (2); and
 - (b) specify a revised date by which the relevant operator is to respond to the request made by virtue of paragraph (2), which must be not less than 42 days beginning with the date on which the information described in sub-paragraph (a) is received by the relevant operator.

Request for information after scheme made

6.—(1) At any time after an authority or authorities have made a scheme under section 127 of the Act the authority or authorities may issue a request to a relevant operator for such relevant information about relevant employees as may be specified by the authority or authorities.

(2) Paragraphs (3) to (5) of regulation 5 apply to a request made under this regulation as they apply to a request made by virtue of regulation 5(2) with the modifications prescribed in paragraph (3).

(3) The modifications are—

- (a) that the reference in regulation 5(3)(a) to a period of 42 days is to be read as—
 - (i) a period of 14 days, where the request is made in relation to the circumstances described in regulation 9(1); and
 - (ii) a period of 21 days in any other case; and
- (b) that the references in regulation 5(3)(b) and (c) to the proposed scheme are to be read as references to the scheme.

Obligation on relevant operator in receipt of request for information

7.—(1) Subject to paragraphs (2) and (3), a relevant operator must respond to a request for information made in accordance with regulation 5 or 6 within the period which applies by virtue of regulation 5(3)(a), 5(5)(b) or, as the case may be, 6(3)(a).

(2) Paragraph (3) applies where an authority or authorities make a request for information by virtue of regulation 5 or 6 and either—

- (a) the operator does not have any or all of the information requested, and is unable to obtain the information at a reasonable cost; or
 - (b) the operator is unable, by virtue of the prohibition contained in paragraph (6)(b), to respond to the request.
- (3) In either of the circumstances described in paragraph (2)—
- (a) the operator must, within 14 days beginning with the date on which the request is received, give notice in writing to the authority or authorities that the operator is unable to respond to the request, explaining why it is not possible to provide any or all of the information requested;
 - (b) the obligation imposed by virtue of paragraph (1) no longer applies to the operator in respect of any of the information in relation to which the operator has given notice under sub-paragraph (a).
- (4) If, having received notice by virtue of paragraph (3)(a), the authority or authorities issue a revised request for information—
- (a) this regulation applies to the revised request as if it had been a request made by virtue of regulation 5 or 6; and
 - (b) the revised request must specify the date by which the relevant operator is to respond to the request, which—
 - (i) must be not less than 42 days beginning with the date on which the revised request is received by the operator; or
 - (ii) must be, in a case where either of the circumstances described in paragraph (2) applied to the request made by virtue of regulation 5 or 6, but the operator failed to inform the authority or authorities of that fact within the period specified in paragraph (3)(a), not less than 42 days beginning with the date on which the period specified in paragraph (3)(a) expired.
- (5) The obligation on a relevant operator to provide information about the identity of appropriate representatives in response to a request made by virtue of regulation 5 or 6 includes an obligation to provide revised information to the authority or authorities if that information changes after the response is provided in accordance with paragraph (1) and before the scheme or (in the case of a scheme which provides for different provisions to come into operation on different dates) the relevant provision of the scheme comes into force.
- (6) In responding to a request for information made by virtue of regulation 5 or 6 a relevant operator—
- (a) must take such steps as are reasonable in the circumstances to ensure that the information provided is complete and accurate; and
 - (b) must not disclose personal data, except to the extent necessary in order to satisfy a request for information about the identity of appropriate representatives.

Allocation arrangements

8.—(1) A scheme made by an authority or authorities must describe allocation arrangements in accordance with this regulation.

- (2) The allocation arrangements must—
- (a) identify organised groupings of relevant employees, or classes of relevant employees within such organised groupings; and
 - (b) identify for each organised grouping of relevant employees or, as the case may be, class of relevant employees within such organised groupings, the quality contract to which each organised grouping or class of relevant employees is to be assigned.

(3) Having given notice under section 125(1) of the Act of a proposal to make a scheme the authority or authorities must consult—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees,

about the proposed allocation arrangements.

(4) A proposed scheme sent to a QCS board in accordance with section 126C(5)(b) of the Act must describe the proposed allocation arrangements.

(5) For the purposes of this regulation a class of relevant employees is to be defined with reference to one or more of—

- (a) the identity of the relevant operators by whom relevant employees are employed;
- (b) the organised grouping to which the relevant employees belong;
- (c) any identifiable sub-groups to which the relevant employees belong, in a case where the organised grouping is divided into sub-groups by the relevant operator for the purpose of organising the responsibilities of relevant employees;
- (d) the characteristics of the work undertaken by relevant employees when working for a relevant employer, including in particular—
 - (i) the nature of the duties undertaken;
 - (ii) the times and the places at which those duties are normally undertaken.

Additional provisions where situation in section 134B(2) arises

9.—(1) This regulation applies if—

- (a) at any time after a scheme is made but before the scheme or (in the case of a scheme which provides for different provisions to come into operation on different dates) the relevant provision of the scheme comes into force, an application is made to the traffic commissioner for the cancellation or variation of a registration made under section 6 of the 1985 Act with respect to services which are affected local services;
- (b) the effect of the application described in sub-paragraph (a) is that affected local services would cease to be provided before the coming into force of the quality contract under which services similar to, or the same as, those which are to cease to be provided would in future be provided (“the relevant quality contract”); and
- (c) the authority or authorities who made the scheme propose to enter into an agreement with a person, by reason of the cessation of local services described in sub-paragraph (b), to provide replacement local services in the period between the cessation of those services and the coming into force of the relevant quality contract.

(2) As soon as reasonably practicable after the authority or authorities have received a copy of the application⁽¹⁶⁾ described in paragraph (1)(a), the authority or authorities who made the scheme must consult—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees,

about the revised allocation arrangements which the authority or authorities propose to make in respect of an organised grouping of relevant employees, or classes of relevant employees within such an organised grouping, affected by the circumstances described in this regulation.

⁽¹⁶⁾ By virtue of regulation 3(4) of the Public Service Vehicles (Registration of Local Services) Regulations 1986 (S.I. 1986/1671), the person making such an application is required to deliver a copy to any authority within whose area there are stopping places for the service. There are amendments to these Regulations but none is relevant.

(3) The authority or authorities who made the scheme must finalise and publish the revised allocation arrangements before—

- (a) issuing invitations to tender in accordance with section 89(1) of the 1985 Act (obligation to invite tenders for subsidised services), or
- (b) entering into an agreement by virtue of section 91(2) of the 1985 Act,

to operate replacement local services.

(4) For the purposes of this regulation “revised allocation arrangements” means allocation arrangements described in regulation 8 revised to take account of the circumstances described in paragraph (1).

Signed by authority of the Secretary of State

7th December 2009

Sadiq Khan
Minister of State
Department for Transport

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) to employees of bus operators who are affected by the making of a quality contracts scheme.

A quality contracts scheme is a scheme made under powers contained in the Transport Act 2000 (“the Act”) under which a local transport 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 transport authority under which a particular operator is granted the exclusive right to operate specified services. The effect of the making of a quality contracts scheme may be that certain operators of local services in the area to which the scheme relates, if they are not awarded a quality contract, would have to cease providing services. Section 134B of the Act, inserted by the Local Transport Act 2008, provides for TUPE to apply so that employees transfer to a new employer where their former employer has ceased providing local services in these circumstances. These Regulations supplement the provisions in TUPE by making specific provisions relevant to the quality contracts scheme situation.

Regulation 3 defines the meaning of “principally connected” for the purposes of section 134B(4) of the Act. The employment of a person spending, on average, at least half of their working time in activities connected wholly or mainly with the provision of services affected by the making of the scheme is principally connected with those services.

Regulation 4 defines the meaning of “relevant information” for the purposes of these Regulations.

Regulation 5 enables an authority proposing to make a scheme to request relevant information from bus operators, and specifies certain time limits.

Regulation 6 enables the authority to issue a request for relevant information after the scheme has been made and specifies certain time limits.

Regulation 7 requires operators to provide the information requested under regulations 5 and 6, unless they do not have the information or it cannot be provided at reasonable cost.

Regulation 8 requires an authority to describe the allocation arrangements (which will identify which employees will transfer to which particular quality contracts) in any scheme which they make. Authorities are also placed under an obligation to consult employee representatives and operators about the proposed allocation arrangements, and to include information about the proposed allocation arrangements in the draft scheme submitted to the QCS board (which must consider and give an opinion on a scheme before it can be made) for consideration.

Regulation 9 makes separate provision for a situation in which an operator ceases providing affected local services before the coming into force of the relevant quality contract. In this situation, the authority may propose to procure a replacement operator at short notice to ensure that services continue to be provided. Section 134B(2) of the Act provides for TUPE to apply to employees who transfer to a replacement operator as a result. This regulation requires the authority to consult on the revised allocation arrangements which it proposes to apply to the transfer of employees in this situation, and to publish the revised allocation arrangements before either issuing invitations to tender for the contract to operate replacement services, or entering into the agreement in circumstances other than accepting a tender.

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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).