

2009 No. 3247

PUBLIC PASSENGER TRANSPORT

**The Quality Contracts Schemes (Pension Protection)
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)(e) and 160(1) of the Transport Act 2000(a).

The making of these Regulations fulfils the obligation imposed on the Secretary of State by section 134B(9) of the Transport Act 2000(b).

Citation and commencement

1.—(1) These Regulations may be cited as the Quality Contracts Schemes (Pension Protection) 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(c) (in so far as it is not already in force).

Interpretation

2. In these Regulations—

“the Act” means the Transport Act 2000;

“relevant employee” means a transferring original employee who, as an employee of the original operator, had rights to acquire pension benefits(d); and

(a) 2000 c. 38. Section 134B was inserted by section 44 of the Local Transport Act 2008 (c. 26).
(b) This provision requires the Secretary of State to make regulations to ensure that pension protection is secured for transferring original employees (as defined in section 134B(10) of the Transport Act 2000), and that such employees have the right to acquire pension benefits from the new employer which are the same, broadly comparable to, or better than those which they had with the original employer.
(c) 2008 c. 26. 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.
(d) The terms “original operator” and “transferring original employee” are defined in section 134B(10) of the Transport Act 2000.

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

Duties to secure pension protection

3.—(1) The duties prescribed in paragraph (2) apply to a local transport authority, or two or more such authorities acting jointly, which have made a scheme and which—

- (a) enter into a quality contract(b) with a person under the scheme; or
- (b) enter into, in the circumstances described in section 134B(2) of the Act, any other agreement with a person for the provision of local services in the area to which the scheme relates.

(2) The authority or authorities must ensure that any contract or agreement entered into with a person in a situation described in paragraph (1) is made, in the event of there being any transferring employees(c), on terms—

- (a) that require the person to secure pension protection(d) for every relevant employee,
- (b) that, where there are relevant employees, require the person—
 - (i) to procure a pensions statement which satisfies the requirements prescribed in regulation 6, and
 - (ii) to provide every relevant employee with a copy of any part of the statement which relates to that employee, and
- (c) that, so far as relating to—
 - (i) the requirement to secure pension protection described in sub-paragraph (a), and
 - (ii) the requirement to procure and provide the statement described in sub-paragraph (b),are enforceable against the person by every relevant employee.

Rights to acquire pension benefits

4. For the purposes of section 134B(8)(b) of the Act (rights to acquire pension benefits), the rights to acquire pension benefits which a relevant employee must have as an employee of the new operator(e) are rights which—

- (a) are the same as the rights the relevant employee had as an employee of the original operator; or
- (b) count, by virtue of regulation 5, as being broadly comparable to, or better than, those rights.

Broadly comparable

5.—(1) For the purposes of regulation 4(b), the rights to acquire pension benefits which a relevant employee must have as an employee of the new operator count as being broadly comparable to, or better than, the rights which the employee had as an employee of the original operator—

- (a) if the rights satisfy the condition prescribed in paragraph (2); or
- (b) if, in the situation described in paragraph (3), the rights satisfy all of the alternative conditions prescribed in paragraph (4).

(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 the Transport Act 2000. This definition is amended by section 19(1) and (4) of the Local Transport Act 2008.

(b) By virtue of section 162(1) of the Transport Act 2000, the term “quality contract” has the meaning given in section 124(4) of the Transport Act 2000.

(c) The term “transferring employee” is defined in section 134B(8)(a) of the Transport Act 2000.

(d) The term “pension protection” is defined in section 134B(8)(b) of the Transport Act 2000.

(e) The term “new operator” takes the meaning given in section 134B(1)(b) or, as the case may be, section 134B(2)(b), of the Transport Act 2000.

(2) The condition is satisfied if the rights to acquire pension benefits that the relevant employee would have as an employee of the new operator mean that the employee would suffer no material detriment overall in terms of the employee's future accrual of pension benefits.

(3) The situation is that there are exceptional circumstances which mean that it would not be reasonably practicable for the new operator to grant rights to the relevant employee which satisfy the condition prescribed in paragraph (2).

(4) The alternative conditions are satisfied if—

- (a) the rights to acquire pension benefits granted to the relevant employee include arrangements to pay compensation to the relevant employee; and
- (b) the arrangements to pay compensation described in sub-paragraph (a) are such that the compensation is sufficient to offset the material detriment which would otherwise be suffered by the relevant employee.

Pensions statement

6.—(1) The pensions statement procured by a person entering into an agreement or contract, under a requirement specified in accordance with regulation 3(2)(b)(i), must be obtained in writing from—

- (a) an individual appointed as actuary under section 47(1)(b) of the Pensions Act 1995(a) for the relevant pension scheme;
- (b) a Fellow of the Faculty of Actuaries; or
- (c) a Fellow of the Institute of Actuaries.

(2) The statement must certify—

- (a) that, to the extent that the principles can be applied, the person making the statement has formed the opinion contained in the statement having had regard to the “general principles” section of the document issued by C D Daykin, Government Actuary, on 26th May 1999 entitled “Assessment of broad comparability of pension rights – Statement of Practice by the Government Actuary”, and which is attached to the document published by Her Majesty's Treasury in June 1999 entitled “Staff Transfers from Central Government: A Fair Deal for Staff Pensions”; and
- (b) that, in the opinion of the person making the statement, every relevant employee will, as an employee of the new operator, have the rights to acquire the pensions benefits prescribed in regulation 4.

(3) For the purposes of this regulation, the “relevant pension scheme” means the pension scheme to which the relevant employee, as an employee of the new operator, will have a right to belong.

Signed by authority of the Secretary of State

7th December 2009

Sadiq Khan
Minister of State
Department for Transport

(a) 1995 c. 26. Section 47 is amended by S.I. 2001/3649, article 142(1) to (3) and the Pensions Act 2004 (c. 35), section 319(1) and Schedule 12 paragraphs 34 and 53.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the pension protection to be provided to certain employees of bus operators who transfer to a new employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) following the making of a quality contracts scheme.

A quality contracts scheme is a scheme made under 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 authority under which a particular operator is granted the exclusive right to operate specified services. The effect of making a scheme may be that certain operators of local services would have to cease providing services. Section 134B of the Act provides for TUPE to apply so that employees transfer to a new employer where their former employer has ceased providing local services in those circumstances. These Regulations fulfil the obligation imposed on the Secretary of State by section 134B(9) of the Act to ensure that pension protection is secured for transferring original employees (as defined in section 134B(10) of the Act) who, as an employee of the original operator, had rights to acquire pension benefits. Such employees are defined in these Regulations as ‘relevant employees’.

Regulation 3 places duties on an authority which has made a scheme. Quality contracts, or other agreements to operate local services related to the making of the scheme, must be made on terms which secure pension protection for all relevant employees, require the new operator to obtain a pensions statement prepared in accordance with regulation 6, and to ensure that all relevant employees receive a copy of the appropriate part of the statement. The contract or agreement must be made on terms which enable relevant employees to take enforcement action against the new operator if the requirements on pension protection and the procurement of the statement are not satisfied.

Regulation 4 provides that the pension benefits which relevant employees have the right to acquire from the new operator must either be the same as, or count as being broadly comparable to, or better than, those enjoyed by the employee whilst employed by the original operator.

Regulation 5 defines the term ‘broadly comparable’ for the purposes of these Regulations. Rights count as being broadly comparable if the employee suffers no material detriment in terms of the pension benefits received. If, in exceptional circumstances, it would not be reasonably practicable to provide such rights, the new employer must instead make arrangements to pay adequate compensation to affected relevant employees to redress any such material detriment.

Regulation 6 prescribes that the pensions statement to be procured by virtue of regulation 3 must be obtained in writing from an appropriately qualified person and must certify that, in the opinion of that person, the pension rights to be provided by the new operator meet the requirements prescribed in regulation 4. An appropriately qualified person includes a Fellow of the Faculty of Actuaries and a Fellow of the Institute of Actuaries. The contact address for the Faculty of Actuaries is Maclaurin House, 18 Dublin Street, Edinburgh, EH1 3PP and that for the Institute of Actuaries is Staple Inn Hall, High Holborn, London, WC1V 7QJ. The person making the statement must certify that in reaching an opinion, to the extent that the principles can be applied, regard has been had to the general principles contained in a statement of practice on broad comparability issued by the Government Actuary on 26th May 1999, and attached to the document issued by Her Majesty’s Treasury in June 1999 entitled “Staff Transfers from Central Government: A Fair Deal for Staff Pensions”. A copy of the document may be obtained from the Correspondence and Enquiry Unit, 2/W1, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ, and a link may be found at http://www.hm-treasury.gov.uk/tax_pensions_guidance.htm.

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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