
STATUTORY INSTRUMENTS

2018 No. 21

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Advanced Quality Partnership
Schemes (England) Regulations 2018

<i>Made</i>	- - - -	<i>10th January 2018</i>
<i>Laid before Parliament</i>		<i>17th January 2018</i>
<i>Coming into force</i>	- -	<i>8th February 2018</i>

The Secretary of State, in exercise of the powers conferred by sections 113N(1)(a) and (b), (2)(b) and (d), (3), (4)(a), (c), (d) and (e), (5)(a)(iii), (iv) and (v) and (b) and (8) and 160(1)(b) and (c) of the Transport Act 2000⁽¹⁾ makes the following Regulations.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Advanced Quality Partnership Schemes (England) Regulations 2018.

(2) These Regulations come into force on 8th February 2018.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Transport Act 2000;

“the 1981 Act” means the Public Passenger Vehicles Act 1981⁽²⁾;

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

“admissible objection” has the meaning given in regulation 8;

⁽¹⁾ 2000 c. 38; section 113N was inserted by section 1 of the Bus Services Act 2017 (c. 21).

⁽²⁾ 1981 c. 14.

⁽³⁾ 1985 c. 67.

“authority” means a local transport authority(4);

“lead authority” means—

- (a) the authority which has made, or is proposing to make, a scheme; or
- (b) where regulation 4 applies, the authority named as the lead authority in the notice of a proposed scheme given under section 113G(1) (notice and consultation requirements) of the 2000 Act(5);

“objector” means an operator who has made an objection in accordance with regulation 9;

“operator” means an operator who provides a local service(6);

“relevant operator” has the meaning given in regulations 6 and 7;

“scheme” means an advanced quality partnership scheme(7);

“traffic commissioner” means a commissioner appointed under section 4 (traffic commissioners) of the 1981 Act(8).

(2) 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(9).

Appropriate rate of return

3. Where a person is required to consider whether an operator could be expected to secure an appropriate rate of return for operating services of a particular standard specified in any proposed or existing scheme, that person must have regard to the typical rates of return for operating local services of a comparable nature elsewhere in England.

Identification of lead authority

4.—(1) This regulation applies to any scheme containing a standard of services which includes requirements as to—

- (a) the frequency or timing of services,
- (b) the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions,
- (c) the ways in which passengers may pay for journeys, or
- (d) the vehicles being used to provide the services,

which is made, or is proposed to be made, by two or more authorities acting jointly.

(2) Where this regulation applies—

- (a) the authorities referred to in paragraph (1) must specify in the notice of the proposed scheme given under section 113G(1) of the 2000 Act which of them is to act as the lead authority for the purposes of these Regulations; and

(4) 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) was amended by the Local Transport Act 2008 (c. 26), section 77(5) and Schedule 4, Part 3, paragraphs 41 and 42 and the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraphs 95 and 96.

(5) Section 113G was inserted by section 1 of the Bus Services Act 2017.

(6) 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.

(7) “Advanced quality partnership scheme” is construed in accordance with section 113C of the Transport Act 2000.

(8) Section 4 was substituted by section 3(2) of the Transport Act 1985. It was also amended by sections 2(1) to (6) and 3(2)(a) of the Local Transport Act 2008 (c. 26).

(9) 1971 c. 80.

- (b) the lead authority must, before acting in accordance with any of the duties and responsibilities assigned by virtue of these Regulations—
 - (i) consult and seek representations from, and
 - (ii) wherever appropriate, act in accordance with the representations of,the other authority or other authorities with whom the scheme is made, or is proposed to be made, jointly with the lead authority.

Services to be excluded from the application of section 113E(7) and (8) of the 2000 Act

5.—(1) This regulation applies where a local service is provided in accordance with a service subsidy agreement, or series of such agreements taken together, and that agreement or series of agreements has the effect described in paragraph (2).

(2) The effect is that by virtue of a requirement of the agreement or series of agreements, an operator provides services which meet one or more relevant requirements.

(3) Where this regulation applies, the restrictions contained in section 113E(7) and (8) (advanced quality partnership schemes: facilities, measures and standards) of the 2000 Act(10) do not apply in respect of any relevant requirements.

(4) For the purposes of this regulation—

- (a) a “service subsidy agreement” means an agreement made under section 9A(4) (general functions of authorities and executives) of the Transport Act 1968(11) or section 63(5) (functions of local councils with respect to passenger transport in areas other than integrated transport areas and passenger transport areas) of the 1985 Act(12); and
- (b) a “relevant requirement” means a requirement specified in a scheme, or proposed scheme as to—
 - (i) the standard of services to be provided in relation to the frequency or timing of services,
 - (ii) the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions,
 - (iii) the ways in which passengers may pay for journeys, or
 - (iv) the vehicles being used to provide the services.

PART 2

Determination of Relevant Operator and Admissible Objection, Decisions and Referrals to a Traffic Commissioner

Definition of “relevant operator”

6.—(1) For the purposes of sections 113E(7) and (8) and 113N(5)(b) (regulations about schemes) of the 2000 Act and these Regulations, “relevant operator” has the meaning given to it by this regulation and regulation 7.

(10) Section 113E was inserted by section 1 of the Bus Services Act 2017.

(11) 1968 c. 73. Section 9A was inserted by section 57 of the Transport Act 1985. Section 9A(4) was amended by section 67 of the Local Transport Act 2008.

(12) Section 63(5) was amended by section 68(2) of the Local Transport Act 2008.

(2) Subject to paragraphs (3) and (4), a “relevant operator” is an operator who, on the day on which an authority or authorities give notice of the proposed scheme under section 113G(1) of the 2000 Act—

- (a) is operating one or more local services in accordance with the particulars registered under section 6 (registration of local services) of the 1985 Act⁽¹³⁾, or
- (b) is eligible under section 6(4) of the 1985 Act to have an application for registration accepted, and has made such an application to a traffic commissioner to register the particulars of one or more local services,

and the local service to which the registration or, as the case may be, application relates has one or more stopping places⁽¹⁴⁾ in the area to which the proposed scheme relates.

(3) Paragraph (2) does not apply to an operator when—

- (a) the operator has, in respect of a local service to which paragraph (2)(a) applies, submitted an application to a traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of that local service, or
- (b) the operator has, in respect of an application to which paragraph 2(b) applies, withdrawn that application,

and the effect of either sub-paragraph (a) or (b) is that the operator would not, at such time as the variation, cancellation or withdrawal takes effect, be operating any local services with one or more stopping places in the area to which the proposed scheme relates.

(4) Paragraph (2) does not apply to an operator of local services if the only services which that operator provides, or proposes to provide, and to which that paragraph would otherwise apply are services which, under the scheme as proposed by the authority or authorities in the notice given under section 113G(1) of the 2000 Act, would be excluded from the scheme under section 113H(3) (making of scheme) of the 2000 Act⁽¹⁵⁾.

Definition of “relevant operator” following modification of proposed scheme

7.—(1) This regulation applies where an authority or authorities, following consultation under section 113G(3) of the 2000 Act, decide that it is appropriate to make a scheme under section 113H(1) of the 2000 Act with modifications and paragraph (2) applies.

(2) This paragraph applies where the operator did not, on the day referred to in regulation 6(2), satisfy the definition of a relevant operator in that paragraph but would have satisfied that definition if the proposed scheme referred to in the notice given under section 113G(1) of the 2000 Act had instead been the scheme as modified.

(3) Where this regulation applies, the lead authority must, as soon as reasonably practicable, serve notice on any operator to whom paragraph (2) may apply informing that operator of the modifications to the proposed scheme.

(4) Regulations 9 to 16 apply to any operator on whom notice is required to have been served in accordance with paragraph (3) as if the reference in regulation 9(1) to the publication of a notice under section 113G(1) of the 2000 Act was a reference to the service of a notice under paragraph (3) of this regulation.

⁽¹³⁾ Section 6 of the Transport Act 1985 has been amended by paragraph 8 of Schedule 12 to the Railways Act 2005 (c. 14), paragraph 2(2) and (3) of Schedule 10 to the Education and Inspections Act 2006 (c. 40), sections 48(2), 49 and 65 of the Local Transport Act 2008, paragraph 2 of Schedule 1 to the Learner Travel (Wales) Measure 2008 (c. 02), S.I. 2010/1158, 2013/1644 and sections 11(2), (3) and (4), 12(2), 18(4) and 20(1) and (2) of, and paragraph 2 of Schedule 1 and paragraph 2 of Schedule 2 to, the Bus Services Act 2017. There are other amendments which are not relevant.

⁽¹⁴⁾ By virtue of section 162(3) of the Transport Act 2000, the term “stopping place” has the meaning given by section 137(1) of the Transport Act 1985.

⁽¹⁵⁾ Section 113H was inserted by section 1 of the Bus Services Act 2017.

Definition of “admissible objection”

8.—(1) For the purposes of sections 113E(7) and (8) and 113N(5)(b) of the 2000 Act and these Regulations, “admissible objection” has the meaning given to it in this regulation.

(2) An “admissible objection” is an objection—

- (a) made in accordance with the procedure prescribed in regulation 9; and
- (b) which satisfies either or both of the grounds described in paragraph (3).

(3) The grounds are that—

- (a) for either or both of the reasons listed in paragraph (4), it would not be practicable for the objector to provide particular relevant services, or relevant services of a particular description, to a specified standard, which would apply to those relevant services if the scheme as proposed in the notice given under section 113G(1) of the 2000 Act were to be made; or
- (b) taking into account the matters listed in paragraph (5), it would not be commercially viable for the objector, acting in a competent and efficient manner, to provide relevant services to a specified standard, which would apply to those relevant services if the scheme as proposed in the notice given under section 113G(1) of the 2000 Act were to be made.

(4) The reasons referred to in paragraph (3)(a) are that—

- (a) the objector would need to procure additional vehicles or equipment, or upgrade existing vehicles or equipment, in order to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to do so by the date specified in the proposed scheme; or
- (b) the objector would need to employ additional staff to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to do so by the date specified in the proposed scheme.

(5) The matters referred to in paragraph (3)(b) are—

- (a) the likely cost to the objector of providing relevant services to the particular standard which would apply to those services if the scheme as proposed in the notice given under section 113G(1) of the 2000 Act were to be made;
- (b) the income which the objector would be likely to receive from operating the relevant services, taking into account any additional fare revenue which is likely to accrue as a result of the —
 - (i) facilities provided, or to be provided, by the authority,
 - (ii) measures taken, or to be taken, by the authority, and
 - (iii) improvements to the standard of services,

if the scheme as proposed in the notice given under section 113G(1) of the 2000 Act were to be made; and

- (c) whether, taking into account the matters described in sub-paragraphs (a) and (b), the objector could be expected to secure an appropriate rate of return from the operation of the relevant services in the area to which the proposed scheme relates.

(6) Subject to paragraphs (7) and (8), for the purposes of this regulation “relevant services” means in relation to a particular operator—

- (a) all local services registered under section 6 of the 1985 Act in the name of that operator which have one or more stopping places in the area to which the scheme relates and in respect of which, on the day on which the authority or authorities gave notice under section 113G(1) of the 2000 Act, the registration was extant; or

- (b) all proposed local services with one or more stopping places in the area to which the scheme relates in respect of which the operator had made an application to a traffic commissioner to register particulars under section 6 of the 1985 Act, and that application was made on or before the day on which the authority or authorities gave notice under section 113G(1) of the 2000 Act.
- (7) A local service is not a relevant service for the purposes of this regulation if, after the day on which the authority or authorities gave notice under section 113G(1) of the 2000 Act—
 - (a) in respect of a local service to which paragraph (6)(a) applies, the operator submits an application to a traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of the service, and paragraph (8) applies; or
 - (b) in respect of a proposed local service to which paragraph (6)(b) applies, the operator withdraws the application to register the service.
- (8) This paragraph applies where at such time as the variation or cancellation takes effect the local service which, but for paragraph (7)(a), would be a relevant service, has no stopping places in the area to which the scheme relates.

Procedure for making an objection

- 9.**—(1) An operator who wishes to object to a requirement falling within section 113E(4)(a) or (b) or (5)(a) or (b) of the 2000 Act must make the objection in writing and serve it on the lead authority within a period of 28 days beginning with the day on which the notice given under section 113G(1) of the 2000 Act in relation to that requirement is published.
- (2) A copy of the objection made under paragraph (1) must, at the same time as the objection is served on the lead authority, be sent by the objector to a traffic commissioner.
- (3) An objection made under paragraph (1) must contain—
- (a) a statement describing the basis on which the objector considers that it is a relevant operator for the purposes of section 113E(7) and (8) of the 2000 Act;
 - (b) a statement describing the basis on which the objector considers that either or both of the grounds specified in regulation 8(3) is or are satisfied; and
 - (c) evidence to support the statements described in sub-paragraphs (a) and (b).
- (4) An operator who makes an objection in accordance with paragraph (1) may withdraw it at any time before the lead authority makes a decision in accordance with regulation 11(1).

Request for further information by lead authority

- 10.**—(1) Subject to paragraph (2), the lead authority may, within a period of 14 days beginning with the day on which an objection described in regulation 9 is received, request such further information or evidence from the objector as that authority considers necessary in order to reach a decision as to whether the objection is an admissible objection or the objector is a relevant operator.
- (2) The lead authority may, with the written consent of the objector, extend the 14 day period specified in paragraph (1).
- (3) If the lead authority requests information or evidence in accordance with paragraph (1) the authority must specify the period within which such information or evidence is to be submitted by the objector and that period must—
- (a) be not less than 14 days beginning with the day on which the request is issued by the authority; and
 - (b) be of sufficient length, taking into account the nature and complexity of the request, to provide the objector with a reasonable period within which to respond.

(4) If the objector fails to respond to a request under paragraph (1) within the period specified in the request in accordance with paragraph (3) the lead authority may nevertheless proceed to make a decision under regulation 11.

Decision of lead authority

11.—(1) Subject to paragraph (2), within a period of 28 days beginning with the day on which an objection is received or, as the case may be, the end of the period within which such further information or evidence requested under regulation 10 must be submitted, the lead authority must make a decision as to whether—

- (a) the objector is a relevant operator, and
- (b) the objection is an admissible objection,

and issue a written notice to inform the objector of that decision.

(2) The lead authority may, with the written consent of the objector, extend the 28 day period specified in paragraph (1).

(3) Where the decision of the lead authority is that—

- (a) the objector is a relevant operator, and
- (b) the objection is an admissible objection,

the written notice issued in accordance with paragraph (1) must satisfy the requirement described in paragraph (4).

(4) The requirement is that the written notice must either—

- (a) describe the modifications that the lead authority proposes to make to the standard of services to be specified in the scheme as a consequence of the decision; or
- (b) describe when and in what manner the lead authority will issue a supplementary notice to inform the objector of the proposed modifications.

(5) The lead authority must send a copy of the written notice issued in accordance with paragraph (1) and, where appropriate, the supplementary notice issued in accordance with paragraph (4)(b) to a traffic commissioner.

Referral to a traffic commissioner

12.—(1) The objector may, within a period of 14 days beginning with the day on which the written notice is issued under regulation 11(1) or, where appropriate, the supplementary notice described in regulation 11(4)(b) is issued, refer either of the matters described in paragraph (2) to a traffic commissioner for a determination under regulation 15.

(2) The matters are—

- (a) an objection to the decision of the lead authority under regulation 11(1) that an objector is not a relevant operator or that an objection is not an admissible objection; or
- (b) an objection to the modified standard of service that the lead authority proposes to specify in the scheme as a consequence of a decision as described in regulation 11(3).

(3) When a matter is referred to a traffic commissioner in accordance with this regulation the objector must at the same time send to the traffic commissioner—

- (a) a copy of the objection as submitted to the lead authority;
- (b) a copy of any further information or evidence submitted to the lead authority in response to any request under regulation 10(1);

- (c) where the matter is an objection described in paragraph (2)(a) a statement describing why, in the opinion of the objector, the decision of the lead authority made under regulation 11 is incorrect; and
 - (d) where the matter is an objection described in paragraph (2)(b) a statement describing why, in the opinion of the objector, either or both of the grounds specified in regulation 8(3) are satisfied in relation to the modified standard of service proposed to be specified in a scheme.
- (4) The objector must, at the same time as submitting the information described in paragraph (3) to the traffic commissioner, submit a copy of that information to the lead authority.

Provision of information to traffic commissioner

13.—(1) Where a matter is referred to a traffic commissioner under regulation 12 for a determination the lead authority must, within a period of 14 days beginning with the day on which the information provided by virtue of regulation 12(4) is received, submit to the traffic commissioner—

- (a) a statement describing the basis on which the decision under regulation 11 was taken; and
- (b) any additional evidence or information which that authority considers to be relevant to the determination.

(2) The lead authority must, at the same time as it submits the statement described in paragraph (1) (a), send to the objector a copy of that statement and such additional evidence or information which the lead authority is submitting to the traffic commissioner in accordance with paragraph (1)(b).

(3) If the lead authority fails to submit the material described in paragraph (1)(a) and (b) within the period specified in that paragraph, the traffic commissioner may nevertheless proceed to make a determination under regulation 15.

(4) The traffic commissioner may, within a period of 14 days beginning with the end of the period for the submission of the material described in paragraph (1)(a) and (b), request such further information or evidence from the objector or the lead authority as the traffic commissioner considers necessary in order to make a determination.

(5) Where such information or evidence is requested in accordance with paragraph (4) the objector or, as the case may be, the lead authority must submit that information or evidence within a period of 14 days beginning with the day on which the request is received.

(6) The objector or, as the case may be, the lead authority must, at the same time as it submits any information or evidence requested under paragraph (4) to the traffic commissioner, send a copy of that information or evidence to the lead authority or, as the case may be, the objector.

(7) If the objector or, as the case may be, the lead authority fails to respond to a request under paragraph (4) within the period specified in paragraph (5) the traffic commissioner may nevertheless proceed to make a determination under regulation 15.

(8) In this regulation, “the traffic commissioner” means the traffic commissioner dealing with the referral in question.

Assessors to assist traffic commissioners

14.—(1) This regulation applies where a traffic commissioner, in considering any matter referred under regulation 12, is required to determine whether the ground specified in regulation 8(3)(b) has been satisfied.

(2) In making such a determination the traffic commissioner may be assisted by an assessor selected from a panel of persons appointed by the Secretary of State for the purposes of section 17A of the 1981 Act⁽¹⁶⁾ (assessors to assist traffic commissioners).

(3) Where a traffic commissioner seeks the assistance of a person described in paragraph (2), that person must be paid such remuneration as may be determined by the Secretary of State.

Determination of a traffic commissioner

15.—(1) Within a period of 28 days beginning with the date of the later of the following—

- (a) the end of the period for submission of the material described in regulation 13(1)(a) and (b), or
- (b) the end of the period within which such further information or evidence requested under regulation 13(4) must be submitted,

a traffic commissioner must make a determination of the matter referred under regulation 12 and issue a written notice to the objector and the lead authority informing them of the determination.

(2) Where the determination of the traffic commissioner is that the objection should be upheld, the traffic commissioner may recommend to the lead authority such modifications to the requirements specified in the proposed scheme as to frequencies or timings, maximum fares, the vehicles being used to provide the services or requirements as to the ways in which passengers may pay for journeys as the traffic commissioner considers appropriate.

(3) The objection is no longer an admissible objection for the purposes of section 113E(7) and (8) of the 2000 Act where the traffic commissioner makes recommendations to the lead authority in accordance with paragraph (2), and the authority either—

- (a) modifies the scheme in accordance with those recommendations, or
- (b) removes the requirement to which the admissible objection relates.

(4) Paragraphs (5) to (9) apply where either—

- (a) the traffic commissioner does not make recommendations to the lead authority in relation to a determination described in paragraph (2), or
- (b) the authority proposes modifications to the scheme which are different to those recommended by the traffic commissioner under paragraph (2).

(5) Where this paragraph applies the lead authority must, within a period of 28 days beginning with the day on which the determination made under paragraph (1) is received, send a written notice to the objector describing the modifications that the authority proposes to make to the standard of services to be specified in the scheme as a consequence of a determination described in paragraph (2).

(6) The lead authority may, with the written consent of the objector, extend the 28 day period specified in paragraph (5).

(7) If within a period of 14 days beginning with the day on which the notice under paragraph (5) is received the objector has not withdrawn the objection, the lead authority may refer the matter back to a traffic commissioner for a determination.

(8) Where any matter is referred back to a traffic commissioner by virtue of paragraph (7), the traffic commissioner dealing with the referral must make a determination within a period of 14 days beginning with the date on which the matter is referred.

(9) Where the determination of the traffic commissioner in response to a referral under paragraph (7) is that the objection is not an admissible objection, the objection is no longer an admissible objection for the purposes of section 113E(7) and (8) of the 2000 Act.

⁽¹⁶⁾ Section 17A of the Public Passenger Vehicles Act 1981 (c. 14) was inserted by section 5 of the Transport Act 1985 (c. 67) and amended by S.I. 2011/2632.

Extension of time

16.—(1) Where a traffic commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly the traffic commissioner may, in accordance with paragraph (2), extend any of the periods described in paragraph (3).

(2) A period described in paragraph (3) may only be extended for such period as the traffic commissioner considers appropriate in the circumstances of the case.

(3) The periods are those specified in—

- (a) regulation 12(1);
- (b) regulation 13(1);
- (c) regulation 13(4);
- (d) regulation 13(5);
- (e) regulation 15(1); and
- (f) regulation 15(8).

PART 3**Review of Requirements as to Frequencies, Timings and Maximum Fares****Interpretation of Part 3**

17. For the purposes of this Part—

- (a) a review is “completed” on the latest of the following dates—
 - (i) where an objection to the whole or any part of the outcome of the review has been submitted by virtue of regulation 26(2), the date on which that objection is finally determined,
 - (ii) the date on which the time for the submission of an objection under regulation 26(2) expires without any such objection having been made, or
 - (iii) the date on which an objection made in accordance with regulation 26(2) is abandoned or withdrawn,

and “objection” includes a reference to any further referral to a traffic commissioner for a determination under regulation 12, as applied by regulation 26;

- (b) a request for a review of a requirement as to frequencies, timings or maximum fares is an “excepted request” if the lead authority is of the opinion that, since the relevant date, there has not been a change in market conditions which materially affects the ability of the operator making the request, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services to the standard specified in the scheme;
- (c) “existing services” means, in relation to a particular operator, all local services registered under section 6 of the 1985 Act⁽¹⁷⁾ in the name of that operator—
 - (i) which have one or more stopping places in the area to which the scheme relates; and

(17) 1985 c. 67. Section 6 of the Transport Act 1985 has been amended by paragraph 8 of Schedule 12 to the Railways Act 2005 (c. 14), paragraph 2(2) and (3) of Schedule 10 to the Education and Inspections Act 2006 (c. 40), sections 48(2), 49 and 65 of the Local Transport Act 2008, paragraph 2 of Schedule 1 to the Learner Travel (Wales) Measure 2008 (c. 02), S.I. 2010/1158, 2013/1644 and sections 11(2), (3) and (4), 12(2), 18(4) and 20(1) and (2) of, and paragraph 2 of Schedule 1 and paragraph 2 of Schedule 2 to, the Bus Services Act 2017. There are other amendments which are not relevant.

- (ii) in respect of which, on the day on which the lead authority, without a request from a relevant participating operator, decides to start a review or, as the case may be, a request for a review is made by a relevant participating operator, the registration is extant;
- (d) “maximum fares requirement period” has the meaning given in regulation 18(2);
- (e) “participating operator” means, in relation to a particular scheme, an operator—
 - (i) who has given a written undertaking to a traffic commissioner in accordance with section 113J(4) or (5) of the 2000 Act(18) in respect of that scheme; and
 - (ii) who is, at the relevant time, operating local services in accordance with the terms of that undertaking;
- (f) “relevant date”, in relation to a requirement as to frequencies, timings or maximum fares means either—
 - (i) the date on which the requirement or, where a requirement as to maximum fares is varied in accordance with a formula that formula, was first introduced; or
 - (ii) where there has been a previous review of that requirement or formula, the date on which that review was completed;
- (g) “relevant participating operator” means, in relation to any requirement as to frequencies, timings or maximum fares specified in a scheme, a participating operator to whom that requirement applies; and
- (h) “review notice” means a notice issued by a lead authority to start a review of requirements as to frequencies, timings or maximum fares under these Regulations.

Review of requirements as to maximum fares by lead authority

18.—(1) Except where regulation 21 applies, where an authority or authorities make a scheme which specifies a standard of services which includes requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, that scheme must specify a maximum fares requirement period in accordance with paragraphs (2) and (3).

- (2) A maximum fares requirement period is, as the case may be, the period—
 - (a) between the date on which the requirements as to maximum fares first come into effect, and the latest date by which it is specified that the first review of those requirements must start; or
 - (b) between the completion of a review of the requirements as to maximum fares, and the latest date by which it is specified that the next review of those requirements must start.
- (3) The maximum fares requirement period must be no greater than 12 months.
- (4) Prior to the end of the maximum fares requirement period the lead authority must start a review by issuing a written review notice to participating operators to whom the requirements as to maximum fares apply.
- (5) The review notice must propose—
 - (a) that requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, contained in the scheme, or any part of the scheme, should cease to have effect;
 - (b) that the existing maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, should continue to have effect until the next review; or

(18) 2000 c. 38. Section 113J was inserted by section 1 of the Bus Services Act 2017 (c. 21).

- (c) revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.
- (6) Provided the lead authority issues a review notice prior to the end of the maximum fares requirement period, the existing requirements as to maximum fares contained in the scheme continue to have effect, unless paragraph (7) applies, until that authority makes a decision in accordance with regulation 25(2).
- (7) Where the decision made in accordance with regulation 25(2) is that revised requirements as to maximum fares should be incorporated into the scheme, the existing requirements as to maximum fares contained in the scheme continue to have effect until such time as those revised requirements take effect in accordance with the timetable specified in accordance with regulation 25(5)(b).
- (8) If the lead authority considers that either or both of the conditions in paragraph (9) are met in relation to some or all of the requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, it may, at any time prior to the end of the maximum fares requirement period, start a review of those requirements by issuing a written review notice to relevant participating operators.
- (9) The conditions are that—
 - (a) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to maximum fares specified in the scheme; or
 - (b) the existing requirements are no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

Failure of lead authority to review requirements as to maximum fares

- 19.**—(1) If a lead authority fails to issue a review notice before the end of the maximum fares requirement period, any participating operator to whom requirements as to maximum fares apply may request a review of the requirements.
- (2) An operator who wishes to make a request under paragraph (1) must make the request in writing and serve it on the lead authority within a period of 28 days beginning with the day on which the maximum fares requirement period ends.
- (3) A copy of the request made under paragraph (1) must, at the same time as the request is served on the lead authority, be sent to a traffic commissioner.
- (4) If, within a period of 14 days beginning with the day on which a request made in accordance with paragraph (1) is received, the lead authority has not issued a review notice, any requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, cease to have effect.
- (5) If a lead authority fails to issue a review notice before the end of the maximum fares requirement period, and no request is made under paragraph (1), any requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, remain in force until, following a subsequent review—
- (a) revised requirements come into effect, or
 - (b) the requirements cease to have effect.

Request for review of requirements as to maximum fares by operator

- 20.**—(1) At any time prior to the end of the maximum fares requirement period a review of any requirements as to maximum fares may be requested by—

- (a) three or more relevant participating operators; or
- (b) at least 50% of relevant participating operators,

whichever is the lesser.

(2) Where a review is requested in accordance with paragraph (1) the operator or operators making the request must—

- (a) specify to which requirements as to maximum fares the request relates;
- (b) submit representations and evidence in support of the request; and
- (c) propose revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

(3) Except where the request for a review is an excepted request the lead authority must, within a period of 28 days beginning with the day on which a request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

Review of formula for varying maximum fares by lead authority

21.—(1) This regulation applies where a scheme includes requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, and that scheme includes a mechanism under which those maximum fares are varied at least every 12 months in accordance with a formula.

(2) If the lead authority considers that the conditions in paragraph (3) are met in relation to any or all of the requirements as to maximum fares that may be charged for particular journeys, or for journeys of a particular description, which are varied in accordance with a formula the lead authority may, at any time, start a review of that formula by issuing a written review notice to relevant participating operators in accordance with paragraph (4).

(3) The conditions are that—

- (a) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to maximum fares specified in the scheme if the fares are varied in accordance with the formula; or
- (b) the effect of the formula is no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

(4) The review notice must propose—

- (a) that the requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, contained in the scheme, or any part of the scheme, should cease to have effect;
- (b) one or more revisions to the formula referred to in paragraph (1); or
- (c) replacing the formula with specified maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

Request for review of formula for varying maximum fares by operator

22.—(1) At any time during a period in which a formula described in regulation 21(1) applies, a review of the formula may be requested by—

- (a) three or more relevant participating operators; or
- (b) at least 50% of relevant participating operators,

whichever is the lesser.

(2) Where a review of the formula is requested in accordance with paragraph (1), the operator or operators making that request must—

- (a) specify to which part of the formula the request relates;
- (b) submit representations and evidence in support of the request; and
- (c) propose a revised formula for the variation of maximum fares.

(3) Except where paragraph (4) applies the lead authority must, within a period of 28 days beginning with the day on which the request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

(4) The obligation in paragraph (3) does not apply where the request submitted in accordance with paragraph (1)—

- (a) is received less than 12 months after the relevant date; and
- (b) is an excepted request.

Review of requirements as to frequencies or timings by lead authority

23.—(1) Where an authority or authorities make a scheme which specifies a standard of services which includes requirements as to the frequency or timing of services, the lead authority may, if it considers that either or both of the conditions in paragraph (2) are met in relation to any or all of those requirements, start a review of those requirements by issuing a written review notice to relevant participating operators.

(2) The conditions are that—

- (a) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to the frequency or timing of services specified in the scheme; or
- (b) the existing requirements are no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

(3) The review notice must propose either—

- (a) that the requirements as to the frequency or timing of services contained in the scheme, or any part of the scheme, should cease to have effect; or
- (b) that those requirements should be revised.

Request for review of requirements as to frequencies or timings by operator

24.—(1) At any time a review of any requirements as to the frequency or timing of services, may be requested by—

- (a) three or more relevant participating operators; or
- (b) at least 50% of relevant participating operators,

whichever is the lesser.

(2) Where a review is requested in accordance with paragraph (1) the operator or operators making that request must—

- (a) specify to which requirements as to the frequency or timing of services the request relates;
- (b) submit representations and evidence in support of the request; and

(c) propose revised requirements as to frequencies and timings.

(3) Except where paragraph (4) applies the lead authority must, within a period of 28 days beginning with the day on which the request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

(4) The obligation in paragraph (3) does not apply where the request submitted in accordance with paragraph (1)—

- (a) is received less than 12 months after the relevant date; and
- (b) is an excepted request.

Procedure for reviews

25.—(1) A review notice must specify the last date for the receipt of representations from relevant participating operators in response to that notice, and that date must be—

- (a) not less than 28 days; and
- (b) not more than 42 days,

after the date on which the review notice is issued.

(2) The lead authority must, within a period of 35 days beginning with the date specified in the review notice in accordance with paragraph (1), decide whether the requirements as to frequencies, timings, maximum fares or the formula used to vary maximum fares, should—

- (a) continue to have effect until the next review;
- (b) cease to have effect; or
- (c) be revised.

(3) The lead authority must, once a decision is made by virtue of paragraph (2), issue a written notice to all relevant participating operators.

(4) The lead authority may, with the written consent of all of the relevant participating operators, extend the period specified in paragraph (2).

(5) Where the decision referred to in paragraph (2) is that the requirements as to frequencies, timings, maximum fares or the formula used to vary maximum fares, should be revised, the notice issued under paragraph (3) must—

- (a) set out the details of the proposed revisions; and
- (b) subject to paragraph (6), set out the timetable for the proposed implementation of the revisions.

(6) The timetable specified in accordance with paragraph (5)(b) must—

- (a) provide for any revision of requirements as to maximum fares, or the formula used to vary maximum fares, to take effect as soon as reasonably practicable after the review is completed;
- (b) provide for any revision of requirements as to frequencies or timings to take effect as soon as reasonably practicable after the review is completed, taking into account the need for operators, as appropriate, to register a new local service, or vary or cancel the registration of an existing local service, in accordance with section 6 of the 1985 Act; and
- (c) take into account, where the lead authority is aware that a relevant participating operator is party to a voluntary partnership agreement, as defined in section 153(2) of the 2000 Act⁽¹⁹⁾ (competition test: functions and agreements relating to buses), or any other agreement with operators of local services, any conditions which that agreement might

⁽¹⁹⁾ Section 153 was substituted by section 46(1) of the Local Transport Act 2008 (c. 26) and was amended by paragraph 8(2) and (3) of Schedule 1, paragraph 5 of Schedule 3 and paragraph 5 of Schedule 4 to the Bus Services Act 2017 (c. 21).

contain restricting the implementation of changes to requirements as to frequencies, timings or maximum fares to particular dates or times in the year.

Objections to the outcome of a review

26.—(1) Revised requirements as to frequencies, timings or maximum fares (including any revision to a formula described in regulation 21(1)) may come into effect only if there are no admissible objections to the revised requirements from relevant participating operators.

(2) Where, following receipt of the notice described in regulation 25(3), a relevant participating operator wishes to submit an objection to the whole or any part of the outcome of the review, the procedures in regulations 9 to 16 apply as if the reference to a notice given under section 113G(1) of the 2000 Act was a reference to a notice given under regulation 25(3).

PART 4

CONSEQUENTIAL AMENDMENTS

Consequential Amendments

27. The amendments in the Schedule have effect.

Signed by authority of the Secretary of State for Transport

10th January 2018

Jesse Norman
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE

Regulation 27

CONSEQUENTIAL AMENDMENTS

Amendments to the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986

1.—(1) The Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986⁽²⁰⁾ are amended as follows.

(2) In regulation 3(1)(c) (notices and proceedings) for “under section 114(3A) of the Transport Act 2000 (quality partnership schemes)” substitute “under section 113D(1) (advanced quality partnership schemes) or section 114(3A) (quality partnership schemes) of the Transport Act 2000”.

Amendments to the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009

2.—(1) The Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009⁽²¹⁾ are amended as follows.

(2) In regulation 4(1)(c) (procedure for making relevant representations)—

(a) before “the quality partnership scheme”, insert “the advanced quality partnership scheme or”;

(b) at the end insert “, as the case may be”.

(3) In regulation 6(5) (period of notice for purposes of section 6 of the 1985 Act) before “114(3A)”, insert “113D(1) or”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about advanced quality partnership schemes. An advanced quality partnership scheme is a scheme made by a local transport authority, or two or more local transport authorities, in England under which the authority provides particular general measures relating to local services or facilities at specific locations along the routes used by local services. In return operators of local services who wish to benefit from those measures or use those facilities must agree to provide services of a particular standard. These standards of service are requirements as to the vehicles being used, frequency or timing of services, maximum fares and the ways in which passengers may pay for journeys.

Advanced quality partnership schemes are made under new provisions inserted into Part 2 of the Transport Act 2000 (“the Transport Act”) by the Bus Services Act 2017.

Part 1 of the Regulations contains general provisions.

Regulation 4 specifies that, where a scheme is to be made jointly by two or more authorities, one of those authorities must be identified as the lead authority for the purposes of these Regulations.

⁽²⁰⁾ S.I. 1986/1629. Regulation 3(1) was amended by S.I. 2009/443.

⁽²¹⁾ S.I. 2009/443. Regulation 4(1) was amended by S.I. 2013/1644.

Status: This is the original version (as it was originally made).

This regulation also imposes obligations on a lead authority to consult and, where appropriate, act in accordance with the representations of the other authorities with whom the scheme is made.

Regulation 5 specifies that where a local bus service is operated under a subsidy agreement with the authority, and the effect of the subsidy agreement is that the service is provided to a standard specified in a scheme or proposed scheme, operators cannot by objecting prevent the inclusion of that standard in the scheme.

Part 2 of the Regulations contains definitions of the terms “relevant operator” and “admissible objection”. Under section 113E(7) and (8) of the Transport Act a scheme cannot include a requirement if there are any admissible objections from relevant operators to that requirement. Part 2 also sets out the process by which disputes are resolved about whether an operator is a relevant operator or an objection is admissible.

Regulations 6 and 7 define the term “relevant operator”. This is broadly an operator of local bus services or someone who has applied to operate such services.

Regulation 8 defines the term “admissible objection”. Broadly, an objection is admissible if it would not be practicable or commercially viable for an operator to provide local bus services to the required standard.

Regulations 9 to 16 set out the procedure that applies when an operator wishes to object to the inclusion in a scheme of requirements as to vehicles, frequencies or timings, maximum fares and the ways in which passengers may pay for journeys. To be admissible an objection must be submitted by a relevant operator to the authority in accordance with the prescribed procedure, and must satisfy either or both of the grounds specified in regulation 8(3) referred to above. The authority must make a decision on whether the objector is a relevant operator and whether the objection is an admissible objection and, if the objector is unhappy with that decision, they may refer the matter to the traffic commissioner for a determination.

Part 3 of the Regulations prescribes the procedure under which requirements as to maximum fares and frequencies or timings of services will be reviewed.

Regulation 17 defines key terms used in Part 3.

Regulation 18 provides that where a scheme contains requirements as to maximum fares, these must be reviewed at least every 12 months. They may be reviewed earlier than the end of the specified period where there has been a change in the market conditions which affects the profitability of the services.

Regulation 19 sets out what happens if the authority fails to carry out a review of requirements as to maximum fares.

Regulation 20 allows more than one operator at any time to request a review of requirements as to maximum fares.

Regulation 21 provides for review at any time by the authority of a formula for varying maximum fares in cases where maximum fares are varied at least every 12 months in accordance with that formula.

Regulation 22 provides that more than one operator may at any time request a review of a formula for varying maximum fares.

Regulation 23 makes provision for review by an authority of requirements as to frequencies or timings. No maximum period between reviews of requirements as to frequencies or timings is set out. It is for authorities to decide when they should take place, provided certain conditions are met.

Regulation 24 makes provision for operators at any time to request a review of requirements as to frequencies or timings. Where a prescribed number of operators request a review of the requirements which apply to them, the authority is generally under an obligation to carry out such a review.

Regulation 25 sets out the procedure for all reviews under Part 3 of requirements as to frequencies or timings, maximum fares or the formula used to vary maximum fares.

Regulation 26 provides that following a review of requirements operators may object to the outcome of that review, and if they do so the procedures in Part 2 of these Regulations will apply.

An impact assessment has not been produced for these Regulations. However an assessment was made of the impact of the Bus Services Bill and this was updated to take account of any additional impacts of the regulations relating to advanced quality partnership schemes. Copies of the assessment may be obtained from the Buses and Taxis Division, Department for Transport, 2/12 Great Minster House, 33 Horseferry Road, London SW1P 4DR or from the Bus Services Bill page on gov.uk

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589730/bus-services-bill-ia-for-regulations-secodary-legislation.pdf

An Explanatory Memorandum for this instrument has been published alongside these Regulations at www.legislation.gov.uk.