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WELSH STATUTORY INSTRUMENTS

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**2009 No. 3293**

**The Quality Partnership Schemes (Wales) Regulations 2009**

**PART 2**

**DETERMINATION OF RELEVANT  
OPERATOR AND ADMISSIBLE OBJECTION**

**Definition of “relevant operator”**

5.—(1) For the purposes of sections 114(6B) and 122(3)(c) of the Act, “relevant operator” has the meaning given to it by this regulation and regulation 6.

(2) Subject to paragraphs (3) and (4) a “relevant operator” is an operator who, on the day on which an authority or authorities first give notice under section 115(1) of the Act of the proposal to make a scheme—

- (a) is operating one or more local services in accordance with particulars registered under section 6 of the 1985 Act<sup>(1)</sup>; or
- (b) is eligible under section 6(4) of the 1985 Act<sup>(2)</sup> 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 service to which the registration or, as the case may be, application relates has one or more stopping places 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 the 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- (b) the operator has, in respect of an application to which paragraph (2)(b) applies, withdrawn that application;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

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(1) Section 6 of the Transport Act 1985 has been amended by the Railways Act 2005, section 59(1) and Schedule 12, paragraph 8; the Education and Inspections Act 2006, section 85 and Schedule 10, paragraphs 2(1) to (3); the Local Transport Act 2008, sections 48(1) and (2) and 65(2) to (4); the Learner Travel (Wales) Measure 2008, sections 25 and 26, Schedule 1, paragraph 2, Schedule 2. It is also to be amended by section 49(1) to (4) of the Local Transport Act 2008 on a date to be appointed in accordance with section 134(3) of that Act. There are other amendments which are not relevant to these Regulations.

(2) Section 6(4) of the 1985 Act provides that an application to register a local service may only be accepted from a person who holds an unconditional PSV operator’s licence issued under the Public Passenger Vehicles Act 1981, a permit granted under section 22 of the Transport Act 1985, 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.

services which, under the scheme as proposed by the authority or authorities in the notice given under section 115(1) of the Act, would be excluded from the scheme under section 116(3) of the Act.

### **Definition of “relevant operator” following modification of proposed scheme**

6.—(1) This regulation applies where an authority or authorities, following consultation under section 115 of the Act, make a scheme under section 116(1) of the Act with modifications and those modifications have the effect described in paragraph (2).

(2) The effect is that an operator who did not, on the day referred to in regulation 5(2), satisfy the definition of a relevant operator in that paragraph would have satisfied that definition if the proposed scheme referred to in the notice given under section 115(1) of the 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 8 to 15 apply to any operator on whom notice is required to have been served in accordance with paragraph (3) as if the reference in regulation 8(1) to the publication of a notice under section 115(1) of the Act was a reference to the service of a notice under paragraph (3) of this regulation.

### **Definition of “admissible objection”**

7.—(1) For the purposes of sections 114(6B) and 122(3)(c) of the Act “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 8; 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 115(1) of the 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 115(1) of the Act were to be made.

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

- (a) additional vehicles would need to be procured by the objector, or existing vehicles upgraded, to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to procure the additional vehicles, or to upgrade existing vehicles, by the date specified in the proposed scheme; or
- (b) additional staff would need to be employed by the objector to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to employ the additional staff 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 115(1) of the 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) provision of facilities by the authority, and
    - (ii) improvements to the standard of services,if the scheme as proposed in the notice given under section 115(1) of the 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 first gave notice under section 115(1) of the 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 the 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 first gave notice under section 115(1) of the 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 first gave notice under section 115(1) of the Act—
- (a) in respect of a local service to which paragraph (6)(a) applies, the operator submits an application to the traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of the service, and the effect is as described in paragraph (8); 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) The effect is that, at such time as the variation or cancellation takes effect the local service or, as the case may be, proposed local service, which, but for paragraph (7) and this paragraph, would be a relevant service, has no stopping places in the area to which the scheme relates.

### **Procedure for making an objection**

**8.—(1)** An operator who wishes to object to a requirement falling within section 114(6)(b) or (6A) of the 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 115(1) of the 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 the traffic commissioner.

(3) An objection made under paragraph (1) must contain—

- (a) a statement describing the basis on which the objector considers that the objector is a relevant operator for the purposes of sections 114(6B) and 122(3)(c) of the Act;
- (b) a statement describing the basis on which the objector considers that either or both of the grounds specified in regulation 7(3) is or are satisfied; and
- (c) evidence to support the statements described in sub-paragraphs (a) and (b).

### **Request for further information by lead authority**

**9.**—(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 8 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 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; and
- (b) be not less than 14 days beginning with the day on which the request is issued by the authority.

(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 10.

### **Decision of lead authority**

**10.**—(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 9 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 the traffic commissioner.

### **Referral to the traffic commissioner**

**11.**—(1) The objector may, within a period of 14 days beginning with the day on which the written notice is issued under regulation 10(1) or, where appropriate, the supplementary notice described

in regulation 10(4)(b) is issued, refer either of the matters described in paragraph (2) to the traffic commissioner for a determination under regulation 14.

- (2) The matters are—
  - (a) an objection to the decision of the lead authority under regulation 10(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 services that the lead authority proposes to specify in the scheme as a consequence of a decision as described in regulation 10(3).
- (3) When a matter is referred to the 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 9(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 10 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 7(3) are satisfied in relation to the modified standard of services 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**

**12.**—(1) Where a matter is referred to the traffic commissioner under regulation 11 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 11(4) is received, submit to the traffic commissioner—

- (a) a statement describing the basis on which the decision under regulation 10 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 14.
- (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 14.

#### **Assessors to assist traffic commissioners**

**13.—**(1) This regulation applies where the traffic commissioner, in considering any matter referred under regulation 11, is required to determine whether the ground specified in regulation 7(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(3).

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

#### **Determination of the traffic commissioner**

**14.—**(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 12(1)(a) and (b); or
- (b) the end of the period within which such further information or evidence requested under regulation 12(4) must be submitted;

the traffic commissioner must make a determination of the matter referred under regulation 11 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, timings or maximum fares as the traffic commissioner considers appropriate.

(3) 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;

the objection is no longer an admissible objection for the purposes of section 114(6B) of the Act.

(4) 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);

paragraphs (5) to (9) apply.

(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).

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(3) Section 17A was inserted by section 5 of the Transport Act 1985.

(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 the traffic commissioner for a determination.

(8) Where any matter is referred back to the traffic commissioner by virtue of paragraph (7), the traffic commissioner 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 114(6B) of the Act.

### **Extension of time**

**15.**—(1) Where the 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 11(1);
- (b) regulation 12(1);
- (c) regulation 12(4);
- (d) regulation 12(5);
- (e) regulation 14(1); and
- (f) regulation 14(8).