

EXPLANATORY MEMORANDUM TO
THE QUALITY PARTNERSHIP SCHEMES (WALES) REGULATIONS 2009
2009 No. 3293 (W.290)

1 This explanatory memorandum has been prepared by the Welsh Assembly Government.

2 Purpose

2.1 This Statutory Instrument makes provision in connection with quality partnership schemes made by local authorities under Part 2 of the Transport Act 2000 (“the 2000 Act”), as amended by the Local Transport Act 2008 (“the 2008 Act”). In particular, the Instrument defines certain terms for the purposes of that legislation and prescribes procedures that are to be followed in certain circumstances where quality partnership schemes are in force.

3 Legislative Context

3.1 Part 2 of the 2000 Act empowers local authorities to make quality partnership schemes, as set out below. The provisions are amended by sections 13 to 18 of the 2008 Act.

4 Territorial Extent and Application

4.1 The Quality Partnership Schemes (Wales) Regulations 2009 apply to Wales.

5 European Convention on Human Rights

5.1 As the 2009 Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

6 Policy background

6.1 Part 2 of the 2000 Act empowers local authorities in Wales to make quality partnership schemes (“QPSs”). Under a QPS the local authority makes available particular facilities in connection with the operation of local bus services. Operators wishing to use those facilities must undertake to provide services to a particular standard.

6.2 The 2008 Act makes various amendments to the provisions about QPSs in Part 2 of the 2000 Act. The purpose of the amendments is to increase the potential for QPSs to contribute to the delivery of local authorities’ local transport policies.

- 6.3 The amendments to the 2000 Act mean that it will now be possible to include requirements as to service frequencies, timings and maximum fares as part of the standard of service specified in a QPS. However, the amended legislation provides that such requirements may be included only where there are no “admissible objections” from “relevant operators”. The first purpose of the Quality Partnership Scheme (Wales) Regulations 2009 is to prescribe the meaning of these two terms. The Regulations also prescribe the procedures to be followed where a relevant operator considers that they have an admissible objection, as well as making provision for periodic review of any requirements as to frequencies, timings and maximum fares specified in a QPS.
- 6.4 Other amendments made to the 2000 Act also enable a QPS to specify restrictions on the registration of new local bus services, or the cancellation or variation of existing ones (“registration restrictions”) where the authority making the scheme is of the opinion that such restrictions are necessary or expedient for the success of the scheme. Section 48 of the 2008 Act amends Part 1 of the Transport Act 1985 accordingly. When an operator applies to register a new local bus service (or to vary or cancel an existing registration), and there is a registration restriction in force in relation to that application, the application is to be accepted by the traffic commissioner only where the commissioner is satisfied that the registration would not be detrimental to services provided under the scheme.
- 6.5 The purpose of the Public Service Vehicles (Registration Restriction) (England and Wales) Regulations 2009 is to prescribe additional procedures, over and above those prescribed in section 6A of the 1985 Act (inserted by section 48 of the 2008 Act), that are to be followed in such cases. These Regulations also include consequential amendments to:
- the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986 (“the TCPI Regulations”), which require the traffic commissioners to publish certain notices, and
 - the Public Service Vehicles (Registration of Local Services) Regulations 1986 (“the Registration Regulations”), which are relevant to these Regulations in that they prescribe certain periods of notice within the registration process.

Consolidation

- 6.6 Further amendments may be needed to the TCPI Regulations and the Registration Regulations as a consequence of other provisions contained in the 2008 Act. Accordingly, those Regulations are not being consolidated at this stage, but that may be considered at a later stage in the implementation of the 2008 Act.

7 Consultation outcome

- 7.1 A consultation draft of the statutory Guidance underlying the Quality Partnership Schemes (Wales) Regulations 2009 was published for consultation on 23 December 2008. Seven comments were received by the 9 March 2009 deadline, from local authorities, the bus industry, the Office of Fair Trading and the Disabled Persons Transport Advisory Committee. The Administrative Council on Justice and Tribunals (ACJT) has also been consulted on the proposals in accordance with the requirements in the Tribunals, Courts and Enforcement Act 2007.
- 7.2 The majority of respondents were broadly in favour of the proposals, though there were a variety of specific comments. A significant number of respondents asked for changes to some of the timescales proposed. Whilst representatives of local authorities asked for amendments to the proposals relating to reviews of requirements about frequencies, timings and maximum fares.
- 7.3 Some respondents asked for amendments to the definitions of “admissible objection” and “relevant operator”, though bus operators and local authorities tended to hold different views about the definitions of these terms. There were also requests for greater clarity on some matters.
- 7.4 A number of specific amendments to the procedures and time limits have been made in response to the comments received during consultation. These include changes to the circumstances and manner in which requirements about frequencies, timings and maximum fares must be - or may be - reviewed.
- 7.5 The Administrative Justice and Tribunals Council was content with the draft proposals, subject to confirmation that the traffic commissioners would be expected to give reasons for any determinations they make by virtue of the Regulations, and that the commissioners would be empowered to hold oral hearings of objections where they considered it appropriate.

8 Statutory Guidance

- 8.1 Statutory Guidance to local authorities under section 123 of the Transport Act 2000 Act has also been published. Copies will be available via the Welsh Assembly Government’s website.

9 Impact

- 9.1 The proposals are likely to involve some modest costs for bus operators where the local transport authority has chosen to make a QPS which includes requirements about frequencies, timings or maximum fares, and where an operator considers he has an admissible objection to those requirements. However, procedures have been put in place partly in response to requests from the bus industry to protect operators’ legitimate interests. This may be particularly important for smaller operators.

9.2 The costs of complying with the procedures set out in the Regulations will be small compared to the benefit of the protection they afford to operators, and compared to the overall benefits expected to accrue to bus passengers as a result of successful implementation of QPSs.

9.3 The impact on the public sector is similarly modest in comparison to the wider public benefits that may arise from QPSs. A Regulatory Impact Assessment for the Statutory Instrument is attached to this Memorandum.

10 Regulating small business

10.1 The legislation applies to small businesses. To protect the legitimate interests of bus operators employing up to 20 people, it is considered necessary to afford those firms the same opportunity as larger firms to register “admissible objections” to requirements about frequencies, timings and maximum fares in quality partnership schemes.

11 Monitoring & review

11.1 Local authorities that make a Quality Partnership Scheme under these arrangements will be required to review the costs, benefits and outcomes applicable to all parties within one year of the scheme finishing, or not more than five years after the scheme was implemented.

12 Contacts

13.1 Colin Eaketts or Huw Thomas at the Welsh Assembly Government by telephoning 029 2082 3748 or 029 2082 6517, respectively, or email Colin.Eaketts@Wales.GSI.Gov.UK or Huw.Thomas@Wales.GSI.Gov.UK.

Regulatory Impact Assessment: Quality Partnership Scheme (Wales) Regulations 2009

Legislative background

The Quality Partnership Scheme (Wales) Regulations 2009 are made in accordance with Sections 118: 122 and 160(1)(a), (b) and (c) of the Local Transport Act 2008. Quality Partnership Schemes will be made by local authorities under Part 2 of the Transport Act 2000 as amended by the Local Transport Act 2008. The Regulations are subject to the negative resolution procedure.

Purpose and intended effect of the legislation

The Transport Act 2000 introduced the concept of bus Quality Partnership Schemes under which local authorities would provide or improve facilities in support of improved bus services. As the other partners in such Schemes,

bus companies would undertake to improve their services to specified levels in order to access the new or improved facilities.

Despite the availability of these powers, there has been no meaningful interest in creating statutory Quality Partnership Schemes. To improve the appeal of these Schemes, it was decided to replace the former quite stringent qualifying criteria with a less onerous public interest test. This makes it far more attractive to local authorities and bus companies to work together to develop and make such Schemes. Quality Partnership Schemes will also allow local authorities and bus operators to work together to plan and deliver bus services that will most meet the needs of local passengers. A Scheme will make bus services more attractive to passengers and encourage them to use public transport, and so reduce the number of journeys made by private car. A Scheme will also help to reduce congestion and contribute to plans for reducing CO2 emissions.

The Regulations make provision about Quality Partnership Schemes which include requirements as to service frequencies, timings and maximum fares. Part 1 of the Regulations set out general provisions. Regulation 3 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 the Regulations. 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 4 specifies that where a local bus service is operated under subsidy from the authority, and the effect of the subsidy agreement is that the service is provided to a standard proposed to be specified in a scheme, operators cannot object to the inclusion of that standard in the scheme.

Part 2 of the Regulations defines, for the purposes of Sections 114(6B) and 122(3)(c) of the Transport Act 2000 the terms “admissible objection” and “relevant operator”. It also prescribes the procedure to be followed by an operator who wishes to object to the inclusion in a scheme of requirements as to frequencies, timings or maximum fares. To be admissible an objection must be submitted by a relevant operator in accordance with the prescribed procedure, and must satisfy either or both of the grounds specified in Regulation 7(3). These are that it would either not be practicable, or it would not be commercially viable, for an operator to provide services to the standard specified. An objection must be submitted to the lead authority for a decision and, if the objector is unhappy with that decision, the matter may be referred to the Traffic Commissioner for determination.

Part 3 of the Regulations prescribes the procedure under which requirements as to frequencies, timings and maximum fares may be reviewed. Where a scheme sets requirements as to maximum fares, these must be reviewed at least every 12 months. No maximum period between reviews is prescribed for

requirements as to timings and frequencies. Where a prescribed number of operators request a review of the requirements that apply to them, the authority is generally under an obligation to carry out such a review. This obligation does not apply where it is less than 12 months since the previous review unless there has been a change in market conditions that materially affects the ability of the operator to secure an appropriate rate of return from operating the existing services. Following a review, operators may object to the outcome of that review, following the procedures in Part 2 of these Regulations.

Implementation

If these Regulations were not made, then it is unlikely that local authorities and bus operators would proceed to develop statutory bus Quality Partnership Schemes in Wales. There are no such Schemes at the moment, but several local authorities have expressed keen interest in exploring the potential that the new Regulations will provide.

Impact Assessment

Options

These are permissive powers. During a detailed consultation exercise on the proposals, local authorities and bus operators – and their representative organisations – welcomed the availability of such powers.

Option 1 – do nothing

As noted above, despite the availability of the necessary powers (under the Transport Act 2000), there are no statutory bus Quality Partnership Schemes in Wales. The new powers available to local authorities is an important element in achieving improved bus services in Wales, and in delivering the aims set out in the National Transport Plan.

Option 2 – provide guidance

The availability of powers under the Transport Act 2000 has not resulted in any statutory bus Quality Partnership Schemes in Wales. The consultation exercise identified clearly that both local authorities and bus operators were unlikely to develop proposals for Schemes under existing legislation, with or without new guidance.

Option 3 – introduce Regulations

This is by far the most effective option, and the one most sought by local authorities and bus operators. Regulations are the only way to give full effect to the proposals set out in the Local Transport Act 2008.

Costs and benefits

Option 1 – do nothing

If the Regulations were not made, there would be no costs incurred by the Welsh Assembly Government, local authorities or bus companies. However, there would also be no likelihood of greater partnership working between local authorities and bus operators. Without greater partnership working it is difficult to deliver improved bus services.

Option 2 – provide guidance

Issuing guidance would entail modest administrative costs to the Welsh Assembly Government. Local authorities would be required to have regard to the guidance and they should follow such guidance unless they can demonstrate good reasons for not doing so. However, as already explained the consultation exercise confirmed that issuing guidance alone is not likely to achieve the service improvements that are required.

Option 3 – introduce Regulations

This is the most effective option which fully addresses the shared objectives of the Welsh Assembly Government, local authorities and bus operators. The cost of publishing the Regulations and Commencement Order and the associated guidance is estimated to be less than £2,000. Provision to meet these costs will be made within Transport DRCs. The financial burdens imposed on local authorities and bus operators will be minimal, and they are required to take those into account in developing their proposals. It is difficult to quantify costs for local authorities and bus operators as this will depend on the number of Schemes, the extent of the proposals and the making of any objections. However, there are significant benefits to passengers stemming from the proposals and these would outweigh the costs involved.

Competition assessment

These Regulations have no effect on competition.

Consultation

Consultation on these proposals took place between 23 December 2008 and 9 March 2009. Seven responses were received, from the Confederation of Passenger Transport (the bus industry trade association), the Office of Fair Trading, the Disabled Persons Transport Advisory Committee and local authorities. No substantive comments were received. A copy of the Regulations is being made available on the Welsh Assembly Government's website.

Post implementation review

The impact of these Regulations will be assessed through local authorities' submissions as part of their Regional Transport Plans, and in twice-yearly meetings with the Confederation of Passenger Transport. Progress will also be monitored by the Public Transport Users' Committee.

Summary

These Regulations are necessary to strengthen provisions contained in the Transport Act 2000 – as amended by the Local Transport Act 2008 - for the development and implementation of statutory bus Quality Partnership Schemes in Wales. Similar powers have been introduced for local authorities and bus operators in England. The availability of these Regulations has been welcomed by both local authorities and the bus industry.