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Local Transport Act 2008

2008 CHAPTER 26

PART 3

BUS SERVICES

Quality contracts schemes: miscellaneous and supplementary provisions

VALID FROM 11/01/2010

40 Power of authorities to provide services in exceptional circumstances

(1) After section 132B of the TA 2000 insert—

“132C Power of authorities to provide services in exceptional circumstances

- (1) This section applies where a person who has agreed to provide a service (“the old service”) in accordance with a quality contract ceases to do so before the end of the period for which the contract was intended to have effect.
- (2) The authority, or any one of the authorities, who entered into the quality contract may, in accordance with subsections (4) to (8) and section 132D, provide a local service (an “interim service”) in place of the old service or any part of it.
- (3) Subsection (2) has effect notwithstanding any prohibition, restriction or limitation contained in any other enactment on the power of the authority to provide local services.
- (4) An authority who provide an interim service of any description must hold a PSV operator's licence to which no condition is attached under section 26 of the Transport Act 1985 (power of traffic commissioner to attach conditions

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to licence) prohibiting the authority from using vehicles under the licence to provide services of that description.

- (5) Subsection (6) applies if—
- (a) an authority provide an interim service in place of an old service or any part of an old service, and
 - (b) the authority or authorities who entered into the quality contract for the provision of the old service propose to enter into a quality contract for the provision of a replacement service in place of that service or (as the case may be) that part.
- (6) The authority, or the authorities acting jointly, must invite tenders (in accordance with section 130) for the provision of the replacement service—
- (a) as soon as reasonably practicable after the authority providing the interim service begin to do so, and
 - (b) in any event no later than three months after the date on which provision of the old service ceased.
- (7) But subsection (6) does not apply if the authority, or the authorities acting jointly, decide to secure the provision of the replacement service under section 131 (circumstances in which quality contracts may be entered into without inviting tenders).
- (8) The particulars of an interim service, or of a replacement service, need not be identical to the particulars of the old service, or that part of the old service, which it replaces.
- (9) In this section—
- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);
 - “interim service” has the meaning given by subsection (2);
 - “the old service” has the meaning given by subsection (1);
 - “replacement service” means a local service provided under a quality contract in place of an old service or any part of an old service.

132D Period for which interim service may be provided

- (1) This section applies for the purpose of determining the period for which an authority may provide an interim service which is provided in place of—
- (a) an old service (“the relevant service”), or
 - (b) part of an old service (“the relevant part”).
- (2) If the authority do not, within the period of three months beginning with the date on which provision of the relevant service ceased,—
- (a) enter into a quality contract to provide a replacement service in place of the relevant service or (as the case may be) the relevant part, or
 - (b) issue an invitation to tender in pursuance of section 132C(6),
- the authority must not provide the interim service after the end of that period.
- (3) If the authority enter into a quality contract to provide such a replacement service within the period mentioned in subsection (2), the authority must not provide the interim service after the earlier of the following dates—

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- (a) the date on which the replacement service is first provided;
 - (b) the date falling nine months after the date on which the interim service is first provided.
- (4) If the authority issue invitations to tender in pursuance of section 132C(6) within the period mentioned in subsection (2) (but do not enter into a quality contract to provide such a replacement service within that period), the authority must not provide the interim service after the earlier of the following dates—
 - (a) the date on which a replacement service is first provided in place of the relevant service or (as the case may be) the relevant part;
 - (b) the date determined in accordance with subsection (5).
- (5) The date is the later of—
 - (a) the date falling nine months after the date on which the interim service is first provided;
 - (b) such date, not later than three months after the date mentioned in paragraph (a), as may be determined by the traffic commissioner on the application of the authority.
- (6) The traffic commissioner may determine a date under subsection (5)(b) only if satisfied that there is a realistic prospect that, if the determination is made, a replacement service will be provided in place of the relevant service or (as the case may be) the relevant part on or before that date.
- (7) An application under paragraph (b) of subsection (5) must be made—
 - (a) to the traffic commissioner for the traffic area in which the interim service is provided (or, if the service is provided in more than one such area, to the traffic commissioner for any of those areas), and
 - (b) not later than one month before the date mentioned in paragraph (a) of that subsection.
- (8) The authority must not make more than one application under subsection (5) (b) in respect of any interim service.
- (9) In this section—
 - “interim service” and “replacement service” have the meaning given in section 132C;
 - “the relevant service” and “the relevant part” have the meaning given in subsection (1);and, in any case where the authority entered into the quality contract for the provision of the relevant service jointly with one or more other authorities, references in this section to the authority entering into a quality contract for a replacement service, or issuing invitations to tender for such contracts, are references to those authorities acting jointly.”
- (2) In section 162(4) of the TA 2000 (provisions where references to Passenger Transport Authorities are to be read as references to Passenger Transport Executives) at the appropriate place insert—
 - “section 132C,
 - section 132D,”.

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- (3) In section 66(1) of the TA 1985 (exclusion of powers of certain councils to run bus undertakings) after “subsection (2) below” insert “ and to section 132C of the Transport Act 2000 ”.

41 Regulations about schemes

- (1) Section 133 of the TA 2000 (regulations about schemes) is amended as follows.
- (2) In subsection (1)(a) (regulations with respect to making, varying or revoking schemes) after “making” insert “ continuing, ”.
- (3) In subsection (1)(b) (approvals of schemes) after “schemes” insert “ for areas in Wales ”.
- (4) After subsection (1)(b) insert—
- “(bb) the procedure to be followed by local transport authorities for areas in England when discharging functions that relate to a QCS board,
 - (bc) the procedure to be followed by QCS boards when discharging functions relating to proposed schemes for areas in England,”.
- (5) In subsection (2) (particular matters for which regulations may provide)—
- (a) in paragraph (a) (proposed variations or revocation of schemes) before “variations” insert “ continuations, ”;
 - (b) in paragraph (e) (applications for approval of proposals) after “proposals” insert “ for areas in Wales ”;
 - (c) after paragraph (e) (form and manner of applications for approval) insert—
 - “(ee) the procedure for determining such applications,
 - (ef) the form and manner of requests under section 126C(4) relating to proposed schemes for areas in England,
 - (eg) the form and manner in which copies of proposed schemes for such areas are to be sent to a QCS board under section 126C(5),
 - (eh) the giving of notice, and the preparation and publication of reports, by QCS boards under section 126D(5),
 - (ei) the form and manner of responses by local transport authorities to such reports,”;
 - (d) in paragraph (f) (form of schemes or variations) after “schemes” insert “ , continuations ”;
 - (e) in paragraph (g) (notice of schemes or of their variation or revocation) before “variation” insert “ continuation, ”.
- (6) After subsection (2) insert—
- “(3) The appropriate national authority may also make regulations modifying or excluding the application of provisions of this Part, so far as relating to quality contracts schemes, in cases where a local transport authority, or two or more local transport authorities acting jointly, do any of the following—
- (a) by virtue of section 126C(6), send to a QCS board a further request under section 126C(4) and modified proposals under section 126C(5),
 - (b) propose or decide that a scheme should continue in operation (with or without modification) under section 131A,

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- (c) propose or decide to vary or revoke a scheme under section 132.
- (4) Regulations made by virtue of subsection (3) must not exclude any requirement for the authority or authorities—
 - (a) under section 126, to obtain the approval of the Welsh Ministers,
 - (b) under section 127(1A), to publish their response to the report of the QCS board.”.

Commencement Information

II S. 41 partly in force; s. 41(6) in force at Royal Assent for specified purposes, see s. 134(1)(c)

VALID FROM 11/01/2010

42 Power to make transitional provision about schemes

- (1) Section 134 of the TA 2000 (transitional provision about schemes) is amended as follows.
- (2) In subsection (1)(a) (transitional provision about the coming into operation of quality contracts schemes) after “quality contracts schemes” insert “ or of provisions of such schemes ”.
- (3) In subsection (1)(b) (transitional provision in connection with variation of schemes) before “variation” insert “ continuation in operation or ”.
- (4) In subsection (2) (application or disapplication, with or without modifications, of sections 6 to 9 of the TA 1985) in paragraph (a), after “(registration of local services)” insert “ , or of sections 89 to 92 of that Act (obligation to invite tenders etc), ”.
- (5) At the end of the section insert—
 - “(3) Any regulations made by virtue of paragraph (a) of subsection (1) are not to have effect in the case of any quality contracts scheme as respects any time before the making of the scheme.”.

VALID FROM 11/01/2010

43 Guidance about schemes

After section 134 of the TA 2000 insert—

“134A Guidance about schemes

- (1) The appropriate national authority may issue guidance concerning the performance by local transport authorities of their functions under this Part in relation to quality contracts schemes.
- (2) Those authorities must have regard to any such guidance.”.

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44 Quality contracts: application of TUPE

(1) After section 134A of the TA 2000 insert—

“134B Quality contracts: application of TUPE

- (1) Subsection (3) applies to a situation in which—
- (a) on the coming into force of a quality contract, local services cease to be provided by a person (the “former operator”) in the area to which the relevant quality contracts scheme, or (in the case of a scheme which provides for different provisions to come into operation on different dates) the relevant provision of the scheme, relates, in accordance with section 129(1)(b), and
 - (b) at the same time, a person (the “new operator”) begins to provide local services in that area under that quality contract.
- (2) Subsection (3) also applies to a situation in which—
- (a) local services which, on the coming into force of a quality contract, a person (the “former operator”) would be required by virtue of section 129(1)(b) to cease providing in the area mentioned in subsection (1)(a) of this section, cease to be provided by the former operator before the coming into force of that quality contract, and
 - (b) at the same time, a person (the “new operator”) begins to provide local services in that area under an agreement which the authority or authorities who made the relevant quality contracts scheme entered into by reason of the cessation of the local services referred to in paragraph (a).
- (3) Any situation to which this subsection applies is to be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) (whether or not TUPE would apply apart from this subsection).
- (4) For the purposes of TUPE, the organised grouping of employees that is subject to the relevant transfer consists of those employees of the former operator whose employment is principally connected with the provision of the local services referred to in subsection (1)(a) or (as the case may be) the local services referred to in subsection (2)(a).
- (5) Any situation which by virtue of this section is treated as a relevant transfer for the purposes of TUPE is also to be treated as a relevant transfer within the meaning of TUPE for the purposes of sections 257 and 258 of the Pensions Act 2004 and any regulations made under section 258 of that Act.
- (6) The Secretary of State may make regulations supplementing the provision made by this section.
- (7) The provision that may be made by regulations under subsection (6) includes—
- (a) provision for determining, for the purposes of subsection (4), whether a person's employment is principally connected with the provision of any particular local services (including provision for or in connection with the appointment of a person to make such determination);

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- (b) provision for determining, in the case of any particular organised grouping of employees, the particular new operator who is to be the transferee for the purposes of TUPE (including provision for or in connection with the appointment of a person to make such determination);
 - (c) provision requiring any person operating local services in the area to which a quality contracts scheme relates to provide the authority or authorities who made the scheme with such information as may be prescribed, at such time as may be prescribed, about such of that person's employees as would fall within subsection (4) if the person ceased to provide those services in the circumstances described in subsection (1)(a);
 - (d) provision requiring the authority or authorities who made a quality contracts scheme to provide all persons operating local services in the area to which the scheme relates with such information as may be prescribed, at such time as may be prescribed, so as to enable such persons to comply with any requirement imposed by virtue of paragraph (c) of this subsection;
 - (e) provision requiring the authority or authorities who made a quality contracts scheme to ensure that any quality contract entered into with a person under the scheme, or any other agreement made with a person for the provision of local services in the area to which the scheme relates, is made on terms—
 - (i) that require the person, in the event of there being any transferring employees, to secure pension protection for every transferring employee, or every transferring employee of a prescribed description, who as an employee of the former operator had rights to acquire pension benefits, and
 - (ii) that, so far as relating to the securing of pension protection for a transferring employee, are enforceable by the employee.
- (8) For the purposes of this section—
- (a) “transferring employee” means an employee of a former operator whose contract of employment becomes, either by virtue of TUPE or by virtue of this section, a contract of employment with a new operator;
 - (b) “pension protection” is secured for a transferring employee if after the change of employer referred to in paragraph (a)—
 - (i) the employee has, as an employee of the new operator, rights to acquire pension benefits, and
 - (ii) those rights are of such description as is prescribed by regulations.
- (9) The Secretary of State must exercise the power conferred by this section to make regulations containing provision falling within subsection (7)(e) so as to ensure—
- (a) that pension protection is required to be secured for every transferring original employee who, as an employee of the original operator, had rights to acquire pension benefits, and

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- (b) that the rights to acquire pension benefits which a transferring original employee has as an employee of the new operator by virtue of paragraph (a) are rights which—
- (i) are the same as the rights the transferring original employee had as an employee of the original operator, or
 - (ii) under provision made by regulations, count as being broadly comparable to, or better than, those rights.
- (10) For the purposes of subsection (9)—
- “transferring original employee” means a transferring employee—
- (a) who immediately before the relevant date was employed by a person (the “original operator”) providing local services in the area to which the relevant quality contracts scheme relates, and
 - (b) whose contract of employment—
 - (i) was, from that date until the change of employer referred to in subsection (8)(a), a contract of employment with the original operator, or
 - (ii) on each occasion when the employee was subject to a relevant transfer became, either by virtue of TUPE or by virtue of this section, a contract of employment with a person providing local services in the area referred to in paragraph (a);
- “relevant date”, in relation to a quality contracts scheme, means—
- (a) the date on which the scheme was made, or
 - (b) where—
 - (i) the local services being provided by the original operator were not subject to the scheme when it was made, and
 - (ii) as a result of either the variation of the scheme, or the continuation of the scheme with modifications, those services became subject to the scheme,

the date on which that variation, or (as the case may be) the decision to continue the scheme with those modifications, was made;
- “relevant transfer” means anything that is, or is to be treated as, a relevant transfer for the purposes of TUPE.
- (11) A person is guilty of an offence under this subsection if—
- (a) the person provides information in accordance with a requirement imposed by virtue of subsection (7)(c),
 - (b) the information is false or misleading in a material particular, and
 - (c) the person knows that it is or is reckless as to whether it is.
- (12) A person who is guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.
- (2) In section 26(1) of the TA 1985 (conditions attached to PSV operator's licence) after paragraph (b) insert—
- “(bza) the operator has failed to comply with a requirement imposed by virtue of section 134B(7)(c) of the Transport Act 2000; or”.

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(3) In section 155(1) of the TA 2000 (penalties) for “or” at the end of paragraph (b) substitute—

“(ba) failed to comply with a requirement imposed by virtue of section 134B(7)(c) of this Act, or”.

Commencement Information

I2 S. 44 partly in force; s. 44 in force at Royal Assent for specified purposes, see s. 134(1)(c)

VALID FROM 11/01/2010

45 Power to make traffic regulation orders

(1) Section 1 of the Road Traffic Regulation Act 1984 (c. 27) (traffic regulation orders outside Greater London) is amended as follows.

(2) In subsection (3A) (orders may be made by local traffic authority for the purposes of quality partnership schemes) for “facilities pursuant to a quality partnership scheme under Part II of the Transport Act 2000” substitute “relevant bus scheme facilities”.

(3) After subsection (3A) insert—

“(3B) In subsection (3A) “relevant bus scheme facilities” means—

- (a) facilities provided pursuant to a quality partnership scheme under Part 2 of the Transport Act 2000;
- (b) facilities provided pursuant to a quality contract within the meaning of that Part (see section 124(4) and (5) of that Act) or otherwise in connection with a quality contracts scheme under that Part.”.

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