
WELSH STATUTORY INSTRUMENTS

2001 No. 3764

The Mandatory Travel Concessions (Reimbursement Arrangements) (Wales) Regulations 2001

Part II

ARRANGEMENTS BETWEEN OPERATORS AND AUTHORITIES

General objective with respect to all operators

3. It is to be an objective (but not a duty) of an authority when formulating reimbursement arrangements to provide that operators both individually and in the aggregate are financially no better and no worse off as a result of their provision of mandatory travel concessions.

Formulation of reimbursement arrangements

4.—(1) Subject to regulations 3 and 8, and to paragraph (2) of this regulation, reimbursement arrangements adopted by an authority must be so formulated that the costs to operators of providing mandatory travel concessions are met by the payments made by the authority to operators pursuant to section 149(1) of the Act.

(2) In paragraph (1) of this regulation, the reference to the costs to operators of providing mandatory travel concessions is a reference to the aggregate of—

- (a) the revenue by way of fares which the authority calculate that the operator has foregone or estimate that the operator will forego in consequence of the provision of the mandatory travel concessions in question, less any additional revenue from fares which the authority estimates the operator has received or will receive by reason of the availability of those concessions; and
- (b) any costs additional to basic operating costs which the authority calculates that the operator has necessarily incurred or will necessarily incur in connection with providing mandatory travel concessions, less any reduction in basic operating costs which the authority estimates that the operator has achieved or will achieve by reason of the availability of those concessions.

Manner of making reimbursement arrangements

5.—(1) The payment periods and payment days are to be specified in the reimbursement arrangements and—

- (a) payment periods must not be longer than 3 months or, in relation to a particular operator or particular operators, such shorter period as the authority may agree in writing with that operator or those operators ; and
- (b) in relation to each payment period, the payment day must not be later than the day which is half way between the first and last days of the payment period or, in relation to a particular operator or particular operators, such day as the authority may agree in writing with that

operator or those operators (and, in ascertaining the payment day, no account is to be taken of half days).

(2) Each reimbursement payment must not be less than 85% of the amount estimated by the authority to be due to the operator in respect of the relevant payment period.

(3) Subject to paragraph (9) of this regulation, the balance of each reimbursement payment must be paid, subject to any adjustments shown to be necessary in the light of information available to the authority pursuant to arrangements giving effect to these Regulations, not later than 3 months after the end of the relevant payment period.

(4) Subject to paragraph (6) of this regulation, if any such balance as is mentioned in paragraph (3) of this regulation is not paid in accordance with that paragraph, provision must be made for the authority to pay simple interest (at a rate of base rate plus 1%) on the amount for the time being unpaid for the period beginning with the last date on which the balance should have been paid in accordance with paragraph (3) and ending with the date of actual payment.

(5) For the purposes of paragraph (4) of this regulation:

- (a) “base rate” (“*cyfradd sylfaenol*”) means the base rate quoted by the reference banks and effective throughout the period specified in that paragraph or, if more than one base rate is effective during that period, the average of those rates;
- (b) if different base rates are quoted by different reference banks in relation to a particular day, the base rate for that day for the purpose of sub-paragraph (a) is the rate which, when the base rate quoted by each reference bank is ranked in a descending sequence of seven, is fourth in the sequence;
- (c) for the purpose of this paragraph, “reference banks” (“*banciau cyfeiriol*”) means, in relation to a particular day, the seven largest institutions (by reference to the value of their assets) authorised under the Banking Act 1987 or any statutory re-enactment of that Act and incorporated in and carrying on a deposit-taking business in the United Kingdom and which quote a base rate.

(6) Interest is not be payable until the entitlement to mandatory travel concessions under section 145(1) of the Act has been in force for 6 months nor in respect of any period falling wholly or partly within the first 6 months after that entitlement comes into force.

(7) If the amount of any reimbursement payment made in accordance with paragraph (2) of this regulation in respect of any payment period exceeds the total amount of the payment found to be payable in respect of that period, provision must be made for the authority to notify the operator in writing accordingly and the authority may thereafter deduct the amount of the excess from the reimbursement payments due to that operator in respect of any subsequent payment period.

(8) If the circumstances described in paragraph (7) of this regulation arise in relation to a person who is no longer an operator, the authority must notify that person accordingly and, unless that person disputes the existence or amount of the excess, that person must pay the amount of the excess to the authority within 30 days of the date of receipt of the notification.

(9) Provision may be made for any reimbursement payment due in accordance with paragraphs (2) and (3) of this regulation to be made otherwise than in accordance with this regulation in any case where an operator fails to supply information in accordance with reimbursement arrangements giving effect to these Regulations—

- (a) in the case of a payment due in accordance with paragraph (2), in sufficient time to allow the authority to form a reasonable estimate of the amount of the payment; or
- (b) in the case of a payment due in accordance with paragraph (3), in sufficient time to allow the authority to calculate the amount of the payment.

(10) Subject to paragraph (9) of this regulation, provision must be made for any reimbursement payment or any part of such a payment due to an operator in respect of mandatory concessions

provided during any period of 12 months commencing on a date specified in the arrangements but not paid to be paid not later than 3 months after the expiry of that period.

Standard method of determining number of, and fares value of, journeys

6.—(1) Subject to paragraph (6) of this regulation, in relation to each scheme, the authority must adopt a standard method to be used, subject to regulation 4, in determining—

- (a) the total number of the journeys made by persons entitled to be provided with mandatory travel concessions on the services of operators; and
- (b) the fares value to be attributed to those journeys.

(2) The standard method must provide for the authority to take into account any data which shows that the method by which such data was derived is more accurate than the standard method.

(3) Where the standard method does not provide for the recording of all such journeys as are mentioned in paragraph (1) of this regulation, that method may provide for—

- (a) the calculation of figures for the total number and fares value of those journeys by any means or combination of means which appears to the authority to be reasonable; and
- (b) if necessary, the apportionment of that number and fares value between all operators to whom reimbursement payments fall to be made by the authority under section 149(1) of the Act.

(4) Where the amounts of reimbursement payments are estimated or calculated otherwise than by reference to a standard method which provides for the recording of all the journeys mentioned in paragraph (1)(a) of this regulation, the estimates or calculations (but not the standard method) must be adjusted if the information upon which they were based is shown to be inaccurate in any material respect.

(5) An authority or an operator who have reason to believe that the standard method used by them is inappropriate in relation to any particular operator may, at their own cost and expense, make provision for a more accurate calculation of the total number and fares value of journeys in respect of that operator.

(6) If, in the opinion of an authority, application of the standard method would, by reason of the nature or extent of the services on which mandatory travel concessions are provided by a particular operator or operators, impose an unreasonable administrative or financial burden on such operator or operators, reimbursement arrangements relating to them may include an exemption from the standard method in any case where the authority and the operator so agree and each of the following conditions are satisfied—

- (a) the authority have established and published criteria by reference to which the entitlement of an operator to exemption from the standard method is to be assessed;
- (b) the National Assembly has given written approval to those criteria;
- (c) the operator or operators to which the exemption is applied satisfy those criteria;
- (d) the exemption is applied by the authority to all other operators entitled to reimbursement payments from that authority who appear to the authority to satisfy those criteria and who wish to take advantage of the exemption.

Review of standard method calculation

7. Provision must be made for an authority to review the calculations made in accordance with the standard method not less than once every three years.

Calculation of reimbursement payments

8. When adopting the standard method in accordance with Regulation 6, and when calculating reimbursement payments in accordance with that method, an authority must have regard to any guidance given by the National Assembly to authorities generally or to that authority in particular for the purposes of this regulation.

Application of Regulations 10 to 17

9. Regulations 10 to 17 apply to the provisions that are to be or (as the case may be) may or may not be included in reimbursement arrangements with respect to operators.

Use of information supplied by operators

10. Any information supplied by an operator to an authority pursuant to arrangements giving effect to this regulation and regulations 11 to 17 may only be used for and in connection with the calculation of reimbursement payments and such information must not be disclosed by the authority except—

- (a) with the consent in writing of the operator; or
- (b) to the extent to which the information in question has become public knowledge otherwise than by the act or omission of the authority.

Prohibition of requirements of certain information

11. Information may not be required on any of the following subjects—

- (a) the total turnover of the business, or of any part of the business, of an operator; and
- (b) the annual rate or amount of the profit or loss of that business, or of any part of it.

Limitation on requirements for certain information

12.—(1) This regulation applies to information on or concerning the following subjects—

- (a) the total number of passengers of all descriptions carried by an operator on services on which mandatory travel concessions are at any time provided; and
- (b) the amount of the fares received by the operator from such passengers.

(2) Subject to paragraph (3) of this regulation, an operator may only be required to supply information to which this regulation applies in relation to all the services which that operator provides and on which mandatory travel concessions are provided.

(3) Where arrangements provide for the division of the area of a travel concession authority into different parts, an operator may be required to supply information to which this regulation applies in relation to each part, but not if this will require him to disclose the numbers of passengers carried on any particular service or group of services provided by him or (as the case may be) the amount of the fares received by him from those passengers.

(4) Provision may be made, in any case where information to which this regulation applies is supplied in accordance with arrangements giving effect to this regulation, for the information to be accompanied by a certificate of its accuracy and completeness given by a responsible person.

(5) In paragraph (4) of this regulation “responsible person” means a person who is a member of one or more of the following bodies—

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Association of Chartered Certified Accountants;

(d) such other professional accountancy body as the authority may approve in writing for the purposes of this paragraph.

(6) If an authority requires information to be accompanied by a certificate of its accuracy and completeness supplied by a responsible person in accordance with paragraph (4) any reasonable additional expense incurred by an operator by reason of that requirement is to be re-imbursed by the authority and for that purpose is to be deemed to form part of the balance payable under regulation 5(3) in respect of the relevant payment period during which the authority was provided with full particulars of such expense.

Exemption of certain operators from supplying information

13.—(1) This regulation applies to operators in respect of whom an exemption from the standard method is being applied under regulation 6(6).

(2) An operator to whom this regulation applies may not be required to supply any information to which regulation 12 applies.

Frequency of supply of certain information

14. Information may not be required to be supplied more frequently than once in every 28 days nor in respect of periods of less than 28 days.

Surveys in services

15. An authority may require an operator to allow officers, servants or agents of that authority to have access with reasonable frequency to (including the right to travel free of charge on) the vehicles of the operator on which mandatory travel concessions are provided for the purpose of—

- (a) surveying or counting or estimating the number of passengers (whether generally or of any particular description) and the fares values attributable to those passengers; and
- (b) obtaining information on other matters relating to the journeys made by passengers who are entitled to be provided with mandatory travel concessions and necessary to the calculation by the authority of reimbursement payments.

Installation and use of equipment

16.—(1) Subject to paragraph (2) of this regulation, an authority may require an operator to have in its vehicles, and to use, equipment which complies with a specification laid down by that authority for the purpose of issuing and cancelling tickets or otherwise recording the numbers and descriptions of passengers on those vehicles.

(2) The costs and expense of providing and installing any such equipment are to be borne by the authority.

(3) Without prejudice to regulation 12, an operator may not, except where the standard method requires the calculation of average fares values in relation to all passengers and for that purpose alone, be required to supply to the authority information derived from the use of any such equipment and relating to journeys by passengers not entitled to be provided with mandatory travel concessions.

(4) An authority may, in relation to any vehicle on which mandatory travel concessions are being provided, require an operator to display on that vehicle, at the operator's expense, a sign making that fact clear and which is reasonably legible to those in general likely to be entitled to such concessions.

Changes in services and fares

17. Provision may be made for an operator to inform the authority of any changes in the services operated by that operator on which mandatory travel concessions are provided, and of any changes in the fares table applicable to those services, in either case when the change takes effect or not later than 7 days thereafter.

Employment of administering agents

18. An authority may not employ as its agent for the purposes of the administration of reimbursement arrangements any person who is a holder of a PSV operator's licence.

General restriction on interference with the manner of providing services

19. Except where done to give effect to this Part of these Regulations, arrangements may not include provisions compliance with which would require the operator to alter the manner in which the operator provides the services on which concessions are provided.