

## SCHEDULES

### SCHEDULE 6

Section 19.

#### PROVISIONS AS TO EXISTING OPERATORS AND SERVICES ON MAKING OF ORDER UNDER S. 19(1)

##### *Introductory*

1 The provisions of this Schedule shall have effect with respect to a designated area upon the appointment of a date in relation to that area under section 19(1) of this Act; and in this Schedule—

" the appointed date " means the date appointed as aforesaid in relation to the designated area in question ;

" existing operator " means a person who immediately before the appointed date was providing an area bus service in that area, not being a subsidiary of the Executive ;

" existing service " means that area bus service ;

" prescribed " means prescribed by regulations under section 21(5) of this Act;

" the relevant road service licence " means the road service licence under which as granted, or, as the case may require, under which as backed under section 137 of the Act of 1960, the existing service was provided immediately before the appointed date.

##### *Right to consent for continuance of existing service*

2 If an existing operator applies to the Executive within the prescribed period and in the prescribed manner for the Executive's consent under this Schedule to the continuance by that operator of an existing service, the Executive shall, subject to paragraphs 3 and 14 of this Schedule, grant that consent and attach thereto the like conditions (and no others) as were attached to the relevant road service licence so far as those conditions relate to the carriage of persons who are both taken up and set down in the designated area in question.

3 Subject to paragraph 8 of this Schedule, the Executive may refuse an application under paragraph 2 thereof if the applicant has, during the period of six months ending with the appointed date, contravened any condition attached to the relevant road service licence.

4 Notwithstanding anything in section 19(2) of this Act, an existing operator who has duly applied for a consent under this Schedule in respect of any existing service may continue to provide that service as if the order under section 19(1) of this Act had not been made for any period—

(a) before he is notified of the grant or refusal of the consent; or

(b) while he is entitled under paragraph 9 of this Schedule to appeal against any condition attached to the consent or, if the consent is refused, against the refusal; or

- (c) if such an appeal has been duly made, before the appeal is determined or withdrawn.

*Variation of conditions*

- 5     The Executive—
- (a) shall not unreasonably refuse any application by an existing operator for the variation of a condition attached to a consent granted under this Schedule ; and
- (b) may at any time without any such application by notice in writing to the operator make any reasonable variation of any such condition;
- but no such variation shall be made which affects the carriage of persons other than persons who are both taken up and set down in the designated area in question.

*Transfer of consent*

- 6     (1) Subject to sub-paragraph (4) of this paragraph, while a consent under this Schedule in respect of an existing service remains in force, the Executive shall on the application of any successor in title to the undertaking of the existing operator concerned so far as it consists of the provision of that service grant the like consent to that successor in title.
- (2) Where a consent has been granted under sub-paragraph (1) of this paragraph to a successor in title of an existing operator, any reference in paragraph 4, 5, 8, 9, 10 or 14 of this Schedule to the existing operator shall be construed as including a reference to that successor in title.
- (3) As from the date when an application under sub-paragraph (1) of this paragraph is made by a successor in title of an existing operator in relation to any consent granted under this Schedule in respect of an existing service, any reference in the said paragraph 4, 5, 8, 9, 10 or 14 to the existing operator shall, subject to sub-paragraph (4) of this paragraph, be construed as including a reference to that successor in title.
- (4) Where a consent under this Schedule in respect of an existing service is in force but a notice of revocation thereof has been given under paragraph 10(1) of this Schedule, that notice shall apply to any like consent applied for under this paragraph in respect of that service as it applies to the existing consent and as if the notice had been served on the applicant as well as on the holder of the existing consent.

*Revocation of consent*

- 7     Subject to paragraph 8 of this Schedule, a consent granted under this Schedule may be revoked at any time by the Executive—
- (a) on the ground that any condition attached to the consent has been contravened ; or
- (b) on there coming to the notice of the Executive a contravention of a condition attached to the relevant road service licence which was not known to the Executive when the consent was granted,
- but, save in accordance with paragraph 10 of this Schedule, shall not be revoked on any other ground.

*Limitation on power to refuse or revoke consent*

- 8 The Executive shall not refuse a consent under paragraph 3 of this Schedule or revoke a consent under paragraph 7 thereof unless, owing to the frequency of the breach of conditions on the part of the existing operator, or to the breach having been committed wilfully, or to the danger to the public involved in the breach, the Executive are satisfied that the consent should be refused or revoked.

*Appeals*

- 9 (1) An existing operator who is aggrieved by—
- (a) any condition attached to a consent under paragraph 2 of this Schedule ; or
  - (b) a refusal of a consent under paragraph 3 of this Schedule ; or
  - (c) the refusal of an application under paragraph 5(a) of this Schedule; or
  - (d) any variation of a condition under paragraph 5(b) of this Schedule; or
  - (e) the failure to grant a consent under paragraph 6 of this Schedule ; or
  - (f) the revocation of a consent under paragraph 7 of this Schedule,
- may, within the prescribed period and in the prescribed manner, appeal to the traffic commissioners by whom the relevant road service licence was granted or, as the case may require, backed who may make such order as they think fit which shall be binding on the Executive.
- (2) Any variation under paragraph 5(b) of this Schedule of a condition attached to a consent, and any revocation of a consent under paragraph 7 of this Schedule, shall not take effect until the expiration of the period prescribed for appealing against that variation or revocation or, if such an appeal is duly made, until the appeal is determined or withdrawn.

*Conditional right to revoke consent*

- 10 (1) Notwithstanding anything in the foregoing provisions of this Schedule, but subject to sub-paragraph (2) of this paragraph, the Executive may at any time by notice in writing to the existing operator concerned revoke as from a date specified in the notice, not being less than nine months after the date of the notice, any consent granted by the Executive under this Schedule; and any such notice shall specify a date, not being less than six months after the date of the Executive's notice, by which any notice by the operator under sub-paragraph (2) of this paragraph must be served on the Executive.
- (2) Where a notice under sub-paragraph (1) of this paragraph is served on any operator, the operator may at any time not later than the date specified for the purpose in the Executive's notice serve on the Executive a notice in writing either—
- (a) requiring the Executive to pay to the operator compensation computed in accordance with paragraph 11 of this Schedule in respect of—
    - (i) any diminution in the value of the assets of the operator's relevant business ; and
    - (ii) any expenditure, other than payment of income tax (including surtax), capital gains tax or corporation tax, incurred in winding up his relevant business or any part thereof,which the operator shows to be attributable to the revocation ; or
  - (b) requiring the Executive to purchase the operator's relevant business at a price computed in accordance with paragraph 12 of this Schedule ;

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

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and, subject to any modification agreed between the operator and the Executive, the Executive shall comply with any such requirement duly made.

- (3) In this paragraph and the said paragraphs 11 and 12—
- " assets " means assets of any description and, subject to the provisions of the said paragraph 12, includes goodwill;
- " relevant business " in relation to an operator means so much of a business or undertaking of the operator as relates to the provision of road passenger transport services.
- 11 (1) The amount of compensation payable in pursuance of a requirement under paragraph 10(2)(a) of this Schedule in respect of the diminution in value of the assets of the operator's relevant business shall be an amount equal to the difference between their market value immediately before the revocation in question and their market value immediately after that revocation.
- (2) No compensation shall be paid in pursuance of such a requirement as aforesaid in respect of any expenditure incurred in winding up the whole or part of the operator's relevant business in so far as that expenditure is taken into account in computing the amount of compensation payable to him under sub-paragraph (1) of this paragraph.
- (3) In this paragraph " market value ", in relation to any assets, means the amount which they would have fetched if sold in the open market by a willing seller to a willing buyer.
- 12 The price payable for an operator's relevant business in pursuance of a requirement under paragraph 10(2)(b) of this Schedule shall be the sum (not being less than the amount, if any, by which the value of the assets comprised therein, other than goodwill, exceeds the aggregate of the liabilities of that business) which the relevant business might have been expected to realise if—
- (a) the consent in question had not been revoked ; and
- (b) the relevant business had been sold as a going concern on the date when the revocation took effect in the open market by a willing seller to a willing buyer.
- 13 (1) The amount of any compensation in pursuance of a requirement under sub-paragraph (a), or the price of any purchase in pursuance of a requirement under sub-paragraph (b), of paragraph 10(2) of this Schedule, if not agreed between the Executive and the operator within six months of the service by the operator of his notice under the said paragraph 10(2), shall be determined by an arbitrator (or in Scotland an arbiter) appointed on the application of either party by the Minister.
- (2) Where any such amount or price falls to be determined in Scotland by an arbiter—
- (a) the arbiter shall have the like powers for securing the attendance of witnesses and the production of documents, and with regard to the swearing of witnesses on oath and the awarding of expenses, as if the arbitration were under a submission ;
- (b) the arbiter may, and if so directed by the Court of Session shall, state a case for the opinion of that Court on any question of law arising in the proceedings ; and
- (c) any award of the arbiter may be recorded in the Books of Council and Session for execution, and may be enforced accordingly.

*Nullification of consent*

- 14 An existing operator shall not be entitled to the grant by the Executive of a consent under this Schedule with respect to any existing service if the operator has entered into an agreement with the Executive with respect to that service under section 19(2) of this Act; and where an existing operator has entered into such an agreement with the Executive with respect to any existing service, any consent with respect to that service granted to that operator by the Executive under this Schedule shall be of no effect.

*Variation of route of existing service*

- 15 Where, in the case of any existing service in respect of which a consent under this Schedule is in force, the route authorised for that service by the relevant road service licence becomes impracticable but a variation of a minor nature only in that route would enable that service to be continued in substantially the same form, paragraph 5 and paragraph 9(1)(c) and (d) of this Schedule shall apply to that variation as if it were a variation of a condition attached to the consent, but as if—
- (a) in the said paragraph 5 the words from " but " onwards, and
  - (b) sub-paragraph (2) of the said paragraph 9,
- were omitted; and any reference in this Schedule to an existing service shall be construed as a reference to that service with any variation thereof by virtue of this paragraph.