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WELSH STATUTORY INSTRUMENTS

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**2001 No. 3764 (W.312)**

**TRANSPORT, WALES**

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

*Made - - - - 22 November 2001*

*Coming into force - - 30 November 2001*

The National Assembly for Wales (“the National Assembly”), in exercise of the powers conferred by sections 149(3) and 150(6) of the Transport Act 2000<sup>(1)</sup> (“the Act”) and of all other enabling powers, hereby makes the following regulations:

**Part I**

**GENERAL**

**Citation commencement and application**

1.—(1) These Regulations may be cited as the Mandatory Travel Concessions (Reimbursement Arrangements) (Wales) Regulations 2001 and come into force on 30 November 2001.

(2) These Regulations apply to Wales.

**Interpretation**

2.—(1) In these Regulations—

“applicant” (“*ceisydd*”) means a person making an application to which regulations 21 to 32 apply;

“authority” (“*awdurdod*”) means a travel concession authority as construed in accordance with section 146 of the Act;

“basic operating costs” (“*costau gweithredu safonol*”) means the costs which the operator would incur in providing a service if the concessions were not provided on that service;

“eligible services” (“*gwasanaethau cymwys*”) is to be construed in accordance with section 146 of the Act;

“fares value” (“*gwerth tocynnau teithio*”), in relation to journeys, means the aggregate amount of the fares which would have been paid if concessions had not been provided;

“mandatory travel concessions” (“*consesiynau teithio gorfodol*”) means travel concessions provided or to be provided under section 145(1) of the Act;

“operator” (“*gweithredydd*”) means an operator who provides mandatory travel concessions and includes any person who is prospectively such an operator;

“payment day” (“*diwrnod talu*”) means any day on which a reimbursement payment is due to be made;

“payment period” (“*cyfnod talu*”) means the period to which a reimbursement payment relates;

“reimbursement arrangements” (“*trefniadau ad-dalu*”) includes the conditions of entitlement of operators to, and the method of determination and manner of payment of, reimbursement under section 149(1) of the Act in respect of mandatory travel concessions;

“reimbursement payment” (“*taliad ad-daliad*”) means any payment falling to be made in accordance with section 149(1) of the Act;

“standard method” (“*dull safonol*”) means the method for calculating the amount of reimbursement payments due to operators providing mandatory travel concessions adopted by an authority in accordance with regulation 6(1);

(2) References in these Regulations to the date on which a notice is given are, in relation to notices sent by post, references to the date on which the notice is, in accordance with regulation 22(2), deemed to be received at the address to which it is sent.

(3) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule bearing that number in these Regulations except where otherwise expressly provided.

(4) Any reference in these Regulations to estimates or calculations made by an authority in relation to reimbursement payments is a reference to estimates or calculations made by the best practical method available to the authority.

## 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.

## **Part III**

### **APPLICATIONS TO THE NATIONAL ASSEMBLY**

#### **Application of regulations 21 to 32**

20. Regulations 21 to 32 apply to applications to the National Assembly under section 150(3) of the Act (modification of proposed reimbursement arrangements or proposed variations to reimbursement arrangements).

#### **Content of notices**

21. Notices served or given under section 150(4) or (5) of the Act must contain the following particulars:

- (i) the name and address of the operator of the service or services to which the notice relates;
- (ii) the name and address of the authority;

- (iii) the route number or name (if any) and the registration number allocated by the traffic commissioner of each service to which the notice relates;
- (iv) the provision of the Act under which the notice is given.

#### **Service of notices**

**22.**—(1) Notices required to be served or given under section 150(4) or (5) of the Act may be delivered by hand or sent by prepaid registered or recorded delivery post.

(2) Any notice sent by post in accordance with paragraph (1) of this regulation is to be deemed to have been received when it ought in due course of post to be delivered at the address to which it is sent.

#### **Applicant's written statement**

**23.**—(1) The applicant must, with the notice required to be given under section 150(4) of the Act, submit to the National Assembly a written statement of—

- (a) the grounds for the application; and
- (b) any reasons or other matters which that person considers to be relevant to the application.

(2) The applicant must, at the same time as it submits the above-mentioned notice and statement to the National Assembly, send a copy of that notice and of that statement to the authority.

#### **Authority's written statement**

**24.**—(1) Subject to regulation 30, the authority must submit to the National Assembly a written statement of any matters which it considers to be relevant to the application.

(2) At the same time as it submits the statement to the National Assembly, the authority must send a copy of it to the applicant.

(3) Unless otherwise allowed by the National Assembly, any such statement must be submitted to the National Assembly and sent to the applicant within 28 days of the date of the notice given to the National Assembly by the applicant.

(4) The National Assembly must inform the applicant forthwith if it allows the authority a longer period for the submission of its statement.

#### **Further written statements and documents**

**25.**—(1) Subject to regulation 30, the National Assembly may, after the authority have submitted their statement, request the applicant or the authority, or both of them, to submit to it such further written statements and documents as it may direct.

(2) Any such further statements and documents must be submitted within such time as the National Assembly may direct, but such time must not, unless the applicant and the authority otherwise agree, be less than 14 days commencing with the date of the National Assembly's request.

(3) The applicant or the authority (as the case may be) submitting any further statement or document to the National Assembly must at the same time send a copy of it to (as appropriate) the authority or the applicant.

#### **Hearings and appearances**

**26.**—(1) The National Assembly may, after the submission of the last written statement or document required under regulations 23 to 25, invite the applicant and the authority to appear before a person appointed by it.

(2) Where the National Assembly has in accordance with regulation 32 appointed a person to determine the application on its behalf, that person is to be the person before whom the applicant and the authority are to be invited to appear.

(3) The hearing pursuant to an invitation from the National Assembly under this regulation must take place not less than 14 days after the date of that invitation (or, if invitations were given on separate dates, the date of the second or last of those invitations).

(4) The applicant may appear in person or be represented by counsel, solicitor or any other person.

(5) The authority may appear by any officer or other person appointed for that purpose, or by counsel, or by solicitor.

### **Defaults in delivery of statements or documents or in appearing**

27. If the applicant or the authority fails—

- (a) to deliver any statement or documents within the time specified in these Regulations or directed by the National Assembly; or
- (b) to appear before a person appointed by the National Assembly in response to an invitation from the National Assembly;

the National Assembly may nevertheless proceed with the determination of the application.

### **Procedure at hearings**

28.—(1) Subject to regulation 27, at any hearing the person appointed by the National Assembly must give to the applicant and the authority an opportunity—

- (a) to address the person appointed and to amplify the written statement submitted under this Part of these Regulations, to give evidence, to call witnesses, and to put questions to any person giving evidence before the person appointed; and
- (b) to make representations on the evidence (if any) and on the subject matter of the application generally but, where evidence is taken, such opportunity must not be given before the completion of the taking of the evidence.

(2) The National Assembly or any person appointed by it to conduct a hearing under this regulation may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law.

(3) Except as otherwise provided in this Part of these Regulations, the procedure at any hearing is to be such as the person appointed by the National Assembly may in that person's discretion determine.

### **Decision by the National Assembly**

29.—(1) The National Assembly, having considered the report of the person, if any, appointed by it pursuant to regulation 26(1) will determine the application and its decision must be recorded in a document signed on behalf of the National Assembly and dated when so signed.

(2) Such document must contain a summary of the reasons for the decision of the National Assembly.

(3) A copy of the document recording the decision of the National Assembly must be sent to the applicant and the authority.

(4) The decision is to be treated as having been made on the date on which the copy of the above-mentioned document is sent to the applicant.

### **Restrictions on use of information in connection with hearings**

**30.**—(1) This regulation applies to information relating to the reimbursement of a relevant operator and received by an authority from that operator pursuant to reimbursement arrangements.

(2) In this regulation “relevant operator” means an operator of public transport services on which there is an entitlement to mandatory travel concessions.

(3) Notwithstanding any provision of regulations 24 to 28, any statement or document submitted or sent by an authority, and any statement made on behalf of an authority appearing before a person appointed by the National Assembly, must not contain any information to which this regulation applies unless the relevant operator has given its consent in writing to such inclusion.

### **Frivolous or vexatious applications**

**31.** If it appears to the National Assembly that an application is frivolous or vexatious it may, after giving the applicant an opportunity of making representations in writing, decide to dismiss the application forthwith and the provisions of regulation 29 is to apply to such decision.

### **Application of regulations 23 to 25, 27 to 29 and 31 to nominee of the National Assembly**

**32.**—(1) If the National Assembly appoints a person in accordance with section 150(6)(b) of the Act to determine an application on its behalf, it must give notice in writing of the appointment to the applicant and the authority.

(2) If the National Assembly appoints a person to determine an application on its behalf, references in regulations 23 to 25 and regulations 27 to 29 to the National Assembly are to be read, with effect from the date of the appointment, as references to the person so appointed.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2).

22 November 2001

*D. Elis-Thomas*  
Presiding Officer of the National Assembly

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 145 of the Transport Act 2000 (“the Act”) provides for mandatory travel concessions to be provided by operators of eligible services (at present local bus services) to certain classes of passenger, including those who are elderly or disabled. These provisions come into force in Wales on 1 April 2002.

Section 149 of the Act requires travel concession authorities (county and county borough councils) to reimburse operators for providing the concessions in accordance with arrangements agreed with the operators or determined by the authorities.

These Regulations are made under sections 149(3) and 150(6) of the Act, which give the National Assembly for Wales (“the National Assembly”) the power to make regulations with respect to such arrangements, the manner of making reimbursement payments to operators and applications to the National Assembly by operators who consider that they may be prejudicially affected by proposed reimbursement arrangements.

Regulation 3 sets the overall objective for reimbursement arrangements, namely that operators should not be financially better or worse off as a result of providing mandatory travel concessions.

Regulation 4 requires that reimbursement payments must meet the costs incurred by operators in providing mandatory travel concessions and defines those costs.

Regulation 5 makes provision for the periods in respect of which payments are to be calculated and the dates when they must be made.

Regulation 6 requires authorities to adopt a standard method for determining the total number of journeys made by those entitled to the concessions and the fares values to be attributed to those journeys. Regulation 7 requires authorities to review the calculations made in accordance with the standard method at least once every three years.

Regulation 6(6) permits authorities, with the approval of the National Assembly, to establish criteria for exempting operators (for example those operating very limited services) from the standard method, providing the operators in question agree, in the interests of avoiding placing an unreasonable administrative or financial burden on them.

Regulation 8 requires authorities, when adopting the standard method and when calculating reimbursement payments in accordance with that method, to have regard to guidance given by the National Assembly.

Regulations 9 to 17 make provision for information which operators may be required to provide under reimbursement arrangements and how it may be used by authorities. If an authority requires operators to instal ticketing equipment to a particular specification, regulation 16 requires the authority to bear the cost of providing and installing it.

Regulation 18 prohibits the employment of a holder of a PSV operator’s licence by authorities as agents for administering reimbursement arrangements.

Regulation 19 prohibits provisions in arrangements which would require the operator to alter the manner in which the service is provided, other than those required to give effect to Part II of the Regulations.

Regulations 21 to 32 provide the procedures to be followed when an operator applies to the National Assembly for a modification to proposed reimbursement arrangements on the grounds that the operator considers that it may be prejudicially affected by the proposals.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.