
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

TRANSPORT

**The National Bus Travel Concession Scheme for Young Persons
(Scotland) Order 2021**

Made - - - - 2021

Coming into force - - 1st April 2021

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 40(1), (3), (4), (7) and 52(4) of the Transport (Scotland) Act 2005(a) and of all other powers enabling them to do so.

In accordance with section 52(3) of that Act, a draft of this Order been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the National Bus Travel Concession Scheme for Young Persons (Scotland) Order 2021 and comes into force on 1 April 2021.

Interpretation

2.—(1) In this Order—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(b),

“the 2005 Act” means the Transport (Scotland) Act 2005,

“eligible journey” has the same meaning as in section 40(7) of the 2005 Act,

“eligible person” means a person specified in article 16,

“eligible service” means a service specified in article 17,

“fare paying age” means persons aged 5 years or over, where a fare is charged by the operator,

“Northern England service” means—

(a) a service to or from Carlisle which starts, passes through or ends in Dumfries and Galloway, and

(b) a service to or from any part of North Northumberland adjoining Coldstream, Norham and Berwick-upon-Tweed, which starts, passes through or ends in the Scottish Borders,

(a) 2005 asp 12. The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) 1992 c.4.

“Notices and Proceedings” means information published by the traffic commissioner under section 5 of the Public Passenger Vehicles Act 1981(a),

“operator” means an operator of eligible services and includes any person who is prospectively to be such an operator,

“payment period” means the period to which a reimbursement payment relates,

“reimbursement arrangements” means the arrangements for reimbursement as described in article 12(1) and (2),

“the scheme” means the National Bus Travel Concession Scheme for Young Persons provided for by this Order,

“shadow fare” means the adult single fare foregone for the eligible journey as derived from the operator’s fare table,

“traffic commissioner” means the traffic commissioner for the Scottish Traffic Area appointed under section 4 of the Public Passenger Vehicles Act 1981,

“travel card” means a card for the purposes of the scheme issued to eligible persons by such persons as the Scottish Ministers determine,

“travel concession” has the meaning given by article 5, and

“working day” has the same meaning as in section 103 of the Financial Services and Markets Act 2000(b).

(2) Any reference in this Order to estimates or calculations made by the Scottish Ministers in relation to reimbursement payments is a reference to estimates or calculations made by the best practical method available to the Scottish Ministers.

The scheme

3. This Order establishes a national travel concession scheme for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys to be known as the National Bus Travel Concession Scheme for Young Persons.

Extent of the scheme

4. The scheme is to operate throughout Scotland and the Scottish Ministers must administer the scheme.

Rate of travel concession

5. The rate of travel concession in the scheme is to be a waiver of the fare (within the meaning of the Public Passenger Vehicles Act 1981(c)) for the journey.

Conditions for operators

6.—(1) Operators admitted to the scheme must provide travel concessions to eligible persons travelling on eligible services on eligible journeys on presentation by the eligible person of a valid travel card, in accordance with the provisions of this Order.

(2) Travel concessions must be provided at all times on presentation of a valid travel card provided that the service is an eligible service.

(a) 1981 c.14. Section 5 was substituted by section 3(2) of the Transport Act 1985 (c.67).

(b) 2000 c.8.

(c) Section 82 includes a definition of “fare” which includes sums payable in respect of a contract ticket or a season ticket.

Operators to whom the scheme applies

7. The Scottish Ministers may admit to the scheme any operator who—
- (a) registers an eligible service with the traffic commissioner under section 6 of the Transport Act 1985(a) where that service is shown in Notices or Proceedings, or
 - (b) has otherwise commenced operation of an eligible service.

Admission to the scheme

8.—(1) Where the Scottish Ministers admit an operator to the scheme they must issue a notice of admission to the operator requiring them to provide travel concessions in accordance with the scheme.

(2) The admission date for the scheme is the date specified in the notice of admission.

(3) If the Scottish Ministers refuse to admit an operator to the scheme the operator concerned may appeal against that decision within the period of 56 days beginning with the day on which the operator was notified of the decision.

(4) Where an operator makes an appeal under paragraph (3), the appeal is to be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(5) The assessment panel must either—

- (a) determine that the operator is admitted to the scheme, or
- (b) determine that the operator is refused admission to the scheme.

(6) The assessment panel must send a copy of their determination to the operator and to the Scottish Ministers.

Compulsory participation notices

9.—(1) An operator of an eligible service may seek to withdraw from the scheme provided that the operator gives 56 days' notice in writing to the Scottish Ministers of their intention to withdraw.

(2) The Scottish Ministers on receiving notice under paragraph (1) may serve the operator with a compulsory participation notice, requiring the operator to participate in the scheme, and that compulsory participation notice has effect until any appeal under paragraph (4) is determined.

(3) If an operator is served with a compulsory participation notice, the operator must comply with the terms of that notice from the date the notice is served.

(4) An operator who has been served with a compulsory participation notice may on cause shown appeal against that notice within the period of 56 days beginning with the day on which the operator was served with that notice.

(5) Where an operator makes an appeal under paragraph (4), the appeal is to be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(6) The assessment panel must either—

- (a) determine that it is appropriate for the operator to continue to participate in the scheme and the operator must participate in the scheme in accordance with the provisions of this Order, or
- (b) determine that it is not appropriate for the operator to continue to participate in the scheme under the existing conditions of the scheme and may propose modifications to the

(a) 1985 c.67.

reimbursement arrangements in relation to an eligible service or services provided by the operator.

(7) The assessment panel must send a copy of their determination to the operator and to the Scottish Ministers.

(8) On receiving a determination of the assessment panel the Scottish Ministers must—

- (a) where a determination is made under paragraph (6)(a), set out in writing to the operator the eligible service or services for which the compulsory participation notice will be effective, or
- (b) where a determination is made under paragraph (6)(b), either cancel the compulsory participation notice or modify the reimbursement arrangements if so proposed by the panel.

Exclusion from the scheme

10.—(1) The Scottish Ministers may exclude an operator of an eligible service from the scheme in relation to any eligible service.

(2) If the Scottish Ministers exclude an operator from the scheme the operator concerned may appeal against that decision within the period of 56 days beginning with the day on which the operator was notified of the decision.

(3) Where an operator makes an appeal under paragraph (2), the appeal is to be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(4) The assessment panel must either—

- (a) determine that the operator must continue to participate in the scheme, or
- (b) determine that the operator is excluded from the scheme in relation to any eligible service.

(5) The assessment panel must send a copy of their determination to the operator and to the Scottish Ministers.

Information to be provided by operators

11.—(1) An operator must provide the Scottish Ministers with the following information for each eligible service—

- (a) a table showing the name and number of each fare stage and the adult single fare charged between stages,
- (b) on request by the Scottish Ministers, a timetable, and
- (c) a note of any changes to any timetable requested by the Scottish Ministers under paragraph (b), at least 7 days before any changes are due to take effect.

(2) The operator must notify the Scottish Ministers of any changes to the adult single fare for an eligible service on the working Monday following the fare revision, or on the date of the fare revision if that is a working Monday.

(3) An operator must provide the Scottish Ministers with information as to either—

- (a) the numbers of passengers carried at adult single fares, the revenue realised from these adult single fares, the average adult single fare and the numbers of eligible persons carried, or
- (b) the number of eligible persons carried, the boarding and alighting stage by shadow fare or survey of each eligible person carried in agreed format and the adult single fare foregone for each eligible person carried.

(4) Any information to be provided in accordance with this article must be provided in such a format and at such intervals, of not less than 4 weeks, as the Scottish Ministers may determine.

(5) Ticketing equipment used by an operator must be approved by the Scottish Ministers and must be capable of providing such information as will allow the Scottish Ministers to audit the accuracy of claims for reimbursement.

(6) An operator must provide any person duly authorised by the Scottish Ministers with access to the operator's records and vehicles for the purpose of obtaining or verifying any information to be provided under this article.

(7) Access is to be provided under paragraph (6) for unspecified periods, without the need for any prior notification and without charge.

Reimbursement of operators

12.—(1) It is to be an objective (but not a duty) of the Scottish Ministers to provide that operators are financially no better and no worse off as a result of their participation in the scheme, taking account of the costs (including a reasonable profit) of a well-run undertaking that is adequately equipped with the means to provide the eligible service.

(2) Reimbursement of operators is to be calculated on a basis that takes account of the adult single fare for each eligible journey on an eligible service made by an eligible person.

(3) The Scottish Ministers must make reimbursement payments to operators at the reimbursement rate specified for each financial year.

(4) The reimbursement rate is 60.3% from the day on which this Order comes into force to the end of the financial year beginning on 1 April 2021.

(5) The value of the adult single fare to be used for reimbursement calculations is to be the value agreed by the operator and the Scottish Ministers for the eligible journey concerned.

(6) In agreeing the value of the adult single fare the operator and the Scottish Ministers must have regard to the value specified in the operator's fare table.

(7) Any dispute between the Scottish Ministers and an operator as to the value of the adult single fare to be used for reimbursement calculations is to be determined by an assessment panel comprising 3 members appointed by agreement between the operator and the Scottish Ministers.

(8) The assessment panel may either accept or reject the value of the adult single fare and must provide reasons for their determination.

(9) The assessment panel must send a copy of their determination to the operator and to the Scottish Ministers.

(10) In this article "reimbursement rate" means the percentage payable by the Scottish Ministers, of the adult single fare for each eligible journey on an eligible service made by an eligible person.

Payment of reimbursement

13.—(1) There are to be 13 payment periods at regular intervals in the financial year.

(2) Reimbursement payments equating to 90% of the amount estimated by the Scottish Ministers to be due to the operator in respect of the relevant payment period must be paid by the Scottish Ministers on the first working day of that period.

(3) But reimbursement payments under paragraph (2) must not be paid until an operator submits to the Scottish Ministers the information required by article 11(1) and (2).

(4) The balance of each reimbursement payment must be paid by the Scottish Ministers, subject to any adjustments shown to be necessary based on the information submitted by the operator in relation to the relevant payment period under article 11, not later than 3 months after the end of that period.

(5) Supplementary reimbursement payments must be paid by the Scottish Ministers where—

- (a) the Scottish Ministers have not made balancing reimbursement payments within 3 months of the end of the relevant payment period, provided that the operator submitted the original claim within 4 weeks of the end of the relevant payment period, and

(b) the Scottish Ministers have not informed the operator that they are disputing the claim.

(6) If the amount of any reimbursement payment made in accordance with paragraph (2) in respect of any payment period exceeds the total amount of the payment found to be payable in respect of that period, the Scottish Ministers may deduct the amount of the excess from the reimbursement payments due to that operator in respect of any subsequent payment period.

(7) Where an operator fails to supply the information required under article 11, the reimbursement payments due in respect of that and future periods may be withheld, in whole or in part, until the information required has been made available and verified.

(8) Any claims for reimbursement made by operators more than 1 year after the end of the relevant payment period will not be considered for reimbursement.

(9) An operator must provide any person duly authorised by the Scottish Ministers with access to the operator's records where relevant for the purposes of validating claims for reimbursement.

(10) Access is to be provided under paragraph (9) without the need for any prior notification and without charge.

Verification

14. Information as to the adult single fare used in an operator's reimbursement claim and any information required by article 11(3) must be verified by compliance audits and surveys and by means of any other verification activity agreed between the operator and the Scottish Ministers.

Travel cards

15.—(1) An eligible person may make an application to the Scottish Ministers for a travel card in order to obtain travel concessions in accordance with the scheme.

(2) The Scottish Ministers may issue a travel card for the purposes of the scheme to an eligible person and it may only be used by the eligible person named on the card.

(3) The Scottish Ministers may withdraw or suspend a travel card—

- (a) if an eligible person knowingly allows their travel card to be used by another person, or
- (b) in such other circumstances as they may determine.

Eligible persons

16. A person is an eligible person for the purposes of the scheme if that person is—

- (a) resident in Scotland,
- (b) of fare paying age, and
- (c) aged 18 years or under.

Eligible services

17.—(1) A service is an eligible service for the purposes of the scheme if it is a service which operates wholly within Scotland or a Northern England service and in either case is either—

- (a) a local service within the meaning given by section 2 of the Transport Act 1985^(a), or
- (b) a service not falling within sub-paragraph (a) that meets all of the following conditions—
 - (i) the service is a scheduled bus or coach service which runs at least once per week for a period of not less than six weeks,
 - (ii) the seats on the vehicle by means of which the service is provided are normally available to members of the general public and the service is used regularly by such members, and

(a) 1985 c.67.

- (iii) arrangements are made which afford members of the general public a reasonable opportunity to become aware of the existence of the service, the times of its operation and the places which it serves.
- (2) A service is not an eligible service if it falls within one of the following classes—
- (a) services which operate through the night at a premium fare,
 - (b) excursions, tours or group hire of coaches,
 - (c) any service where fares currently charged by the operator of that service include a special amenity element, or
 - (d) services which are difficult to align with routine services and fare structures.
- (3) For the purposes of paragraph (2)(c) fares are to be regarded as including a special amenity element if they are significantly high in relation to the general level of fares for comparable journeys.

Amendments to the National Bus Travel Concession scheme for Older and Disabled Persons (Scotland) Order 2006

18.—(1) The National Bus Travel Concession scheme for Older and Disabled Persons (Scotland) Order 2006(a) is amended as follows.

- (2) In article 12—
 - (a) in paragraph (2B), after sub-paragraph (k) insert—
 - “(l) for the financial year beginning on 1 April 2021 £226,100,000.”,
 - (b) in paragraph (2D), after sub-paragraph (h) insert—
 - “(i) 55.9 % for the financial year beginning on 1 April 2021.”,
- (3) In article 13, in paragraph (8), for the words “3 years” substitute “1 year”.

Amendment of the National Bus Travel Concession scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006

19.—(1) The National Bus Travel Concession scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006(b) is amended as follows.

- (2) In article 2, in the definition of “Northern England service”, in sub-paragraph (b), after “Berwick-upon-Tweed,” insert—
 - “which starts, passes through or ends in the Scottish Borders.”
- (3) In article 3—
 - (a) for paragraph (c) substitute—
 - “(c) persons who—
 - (i) are of fare paying age but aged under 16 years, with a diagnosis of severe sight impairment or sight impairment that has been confirmed by a letter issued by an ophthalmologist or paediatrician;
 - (ia) are aged 16 years or over and have been certified as severely sight impaired or sight impaired, and in consequence are registered as severely sight impaired or sight impaired in a register maintained by or on behalf of a council constituted under the Local Government etc. (Scotland) Act 1994(c);
 - (ii) would be refused a driving licence as they would fail to meet the eyesight standard as defined in section 96(1) of the Road Traffic Act 1988(d);”

(a) S.S.I. 2006/107, amended by S.S.I. 2010/140, S.S.I. 2013/114, S.S.I. 2015/133, S.S.I. 2017/71 and S.S.I. 2018/98.
 (b) S.S.I. 2006/117 as amended by S.S.I. 2013/65.
 (c) 1994 c.39.
 (d) 1988 c.53.

(b) in paragraph (k), for sub-paragraph (iv) substitute—

“(iv) are of fare paying age but aged under 16 years, with a diagnosis of severe sight impairment that has been confirmed by a letter issued by an ophthalmologist or paediatrician; or

(v) are aged 16 years or over and have been certified as severely sight impaired, and in consequence are registered as severely sight impaired in a register maintained by or on behalf of a council constituted under the Local Government etc. (Scotland) Act 1994”,

(c) after paragraph (l) insert—

“(m) persons who are travel companions who commence and terminate their journey at the same locations as a child aged under 5 years whom the companion is assisting, where the child—

(i) is in receipt of the higher or middle rate of the care component of the disability living allowance in accordance with section 72 of the 1992 Act^(a);

(ii) is living in a residential home or hospital and is eligible for the higher or the middle rate of the care component of the disability living allowance;

(iii) has a diagnosis of severe sight impairment that has been confirmed by a letter issued by an ophthalmologist or paediatrician;

but only where they commence and terminate their journey at the same locations as the child aged under 5 years whom they are assisting.”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(a) 1992 c.4. The Social Security Contributions and Benefits Act 1992 is defined as “the 1992 Act” in the National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 40(1), (3), (4), (7) and 52(4) of the Transport (Scotland) Act 2005 (asp 12) which enables the Scottish Ministers to make national travel concession schemes. This Order makes provision for a National Bus Travel Concession Scheme for Young Persons (“the scheme”). The Order comes into force on 1 April, meaning that Ministers will be able to formally admit operators to the scheme and put in place the necessary administrative arrangements to begin running the scheme, from this date.

Article 3 establishes the scheme for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys.

Article 4 provides that the scheme is to operate throughout Scotland and that the Scottish Ministers shall administer the scheme.

Article 5 provides for the rate of travel concession in the scheme to be a waiver of the normal fare applicable.

Article 6 outlines the conditions for operators to whom the scheme applies.

Article 7 details which operators the Scottish Ministers may admit to the scheme.

Article 8 provides for matters relating to admission to the scheme. Where the Scottish Ministers refuse to admit an operator to the scheme then the operator may appeal against that decision.

Article 9 provides that an operator may seek to withdraw from the scheme provided 56 days written notice is given to the Scottish Ministers. On receiving such a notice the Scottish Ministers may serve the operator with a compulsory participation notice, requiring the operator to participate in the scheme. An operator may appeal against a compulsory participation notice on cause shown.

Article 10 provides that the Scottish Ministers may exclude an operator of an eligible service from the scheme in relation to any eligible service. The operator concerned may appeal against the decision to exclude them from the scheme.

Article 11 details the information that operators must provide to the Scottish Ministers in terms of the scheme.

Article 12 makes provision as to the reimbursement of operators participating in the scheme and the basis of reimbursement calculations.

Article 13 details how reimbursement will be paid to operators.

Article 14 provides that information as to the adult single fare used in reimbursement claims shall be verified by compliance audits and surveys and by means of any other verification activity agreed between the operator and the Scottish Ministers.

Article 15 makes provision as to travel cards for the purposes of the scheme.

Article 16 specifies who is an eligible person for the purposes of the scheme. To be eligible a person must be resident in Scotland and fall within both of the classes of person described in article 16(a) and (b). These classes include those persons who are 5 or over (article 16(a)), or 18 or under (article 16(b)) meaning that only a person aged 5 to 18 years old will be an eligible person for the purposes of the scheme.

Article 17 specifies which services are eligible services for purposes of the scheme.

Article 18 amends article 12 of the National Bus Travel Concession scheme for Older and Disabled Persons (Scotland) Order 2006 to set the capped level of funding and the reimbursement rate for the financial year 2020/21. Article 18 also amends article 13 of the National Bus Travel Concession scheme for Older and Disabled Persons (Scotland) Order 2006 to provide that any claims for reimbursement made by operators more than 1 year after the end of the relevant payment period will not be considered for reimbursement.

Article 19 amends the list of eligible persons for the purposes of the scheme contained in article 3 of the National Bus Travel Concession scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006. The eligibility criteria for people with sight impairments, and for travel companions of such people, are changed to reflect the different means of confirming the impairment for the purposes of the scheme, depending on the age of the person with the sight impairment. A travel companion of a child aged under 5 years old becomes an eligible person for the scheme where the child meets the criteria of receiving certain benefits, or is diagnosed as being severely sight impaired.

A Business and Regulatory Impact Assessment (“BRIA”) has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF and on line at www.legislation.gov.uk.

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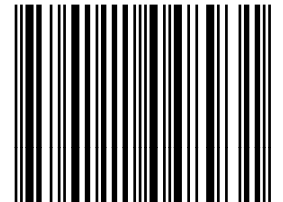
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