

CABINET

Meeting date: 26 NOVEMBER 2015

From: CORPORATE DIRECTOR – ENVIRONMENT & COMMUNITY SERVICES

THE ENGLISH NATIONAL CONCESSIONARY TRAVEL SCHEME – THE CUMBRIA SCHEME 2016/17

1.0 EXECUTIVE SUMMARY

1.1 This report sets out proposals for the Cumbria Scheme for 2016/17 including the reimbursement rate to be paid to transport operators. The draft Cumbria Concessionary Travel Scheme for 2016/17 is attached (see Appendix 1).

2.0 STRATEGIC PLANNING AND EQUALITY IMPLICATIONS

2.1 The 1985 and 2000 Transport Acts require that a statutory minimum concessionary travel scheme be offered to people of retirement age, and eligible people with disabilities, to free off peak travel on scheduled bus services. In 2008 the Concessionary Bus Travel Act extended this to allow eligible passengers to use this concession on all local bus services in England.

2.2 The scheme is specifically aimed at older people and people with disabilities. However because the availability of scheduled services is considerably less in the rural areas the benefits will accrue to a greater degree in the urban areas. Where there are no scheduled services access to the key service centres are facilitated through demand responsive schemes such as rural wheels, village wheels and voluntary cars schemes. These types of schemes are not scheduled bus services and consequently the Council is not required to enable concessionary pass holders to travel free of charge.

2.3 An EIA was undertaken in 2011 when the County Council made the decision to reduce the reimbursement from 65% to 58%. An EIA has also been undertaken by central government in respect of the National Scheme. The County Council administers the scheme which is determined by the Department for Transport.

3.0 RECOMMENDATION

It is recommended that Cabinet:

- 3.1 **Approve publication, in accordance with paragraph 4.12, of the 2016/17 Cumbria Concessionary travel Scheme as set out in Appendix 1 which maintains the ENCTS basic reimbursement rate at 58%**
- 3.2 **Agree that following publication of the 2016/17 scheme any non-substantial amendments can be approved by the Corporate Director for Environment and Community Services.**

ADVICE OF CORPORATE DIRECTOR – ENVIRONMENT & COMMUNITY SERVICES

4.0 BACKGROUND

- 4.1 A mandatory bus concession for older and disabled people has been in place since 2001. The concession has gradually been extended since its introduction and since April 2008 has provided free off peak local bus travel to eligible older and disabled people. The Council's current scheme is a mixture of the mandatory scheme (under s145A of Transport Act 2000) and additional discretionary elements (under s93 Transport Act 1985).
- 4.2 The Mandatory scheme covers anyone who has an ENCTs pass who travels on an eligible journey on an eligible service. An eligible journey is a public service bus after 9.30 on weekdays and any time bank holiday and weekends. There are exclusions set out which define what is not an eligible service and these include services operated primarily for the purpose of tourism (and fares with a special amenity element) (s146 TA 2000 and SI 2010/459)
- 4.3 The Council's scheme which covers the Mandatory and Discretionary elements sets out what it will reimburse at Schedule 2 and this includes any local bus service. Local bus service is defined at s2 of the TA 1985 (and the TA 2002 uses the same definition see s 162(3)).
- 4.4 Currently the Council is going beyond the requirements of the Mandatory scheme and including any service that meets the wide definition of a local bus service under s2 of the TA 1985. This means that according to the Council's scheme it should include all bus services in Cumbria that have set down and pick up points less than 15 miles apart, are not private chartered services or not used under a S19 permit. The Council's scheme currently includes tourist routes and the other services excluded under the TA 2000. It does not include special amenity elements as legislation excludes payments for such fares in both mandatory and discretionary schemes.

- 4.5 The County Council have been responsible for the reimbursement of transport operators and the administration of the English National Concessionary Travel Scheme (ENCTS) since 1 April 2011. The legislation that governs the scheme requires the operator to be **no better or worse off** for carrying concessionary fare payers.
- 4.6 The 'Mandatory Travel Concession (England) Regulations 2011' detail the criteria on how a Transport Concession Authority (TCA), published ENCTS scheme can be changed – the regulations determine a process by which the reimbursement rate can be calculated. Reducing the reimbursement rate specifically on cost saving grounds to the TCA is not one of the criteria described. It should be noted — that the same legislation provides for the Right of Appeal to the Secretary of State by bus operators should they believe any modification of the reimbursement rate is detrimental to them in respect of **no better or worse off** when delivering the ENCTS scheme.
- 4.7 The Council's current ENCTS Concessionary Scheme became live 01 April 2015. The Council is required to publish the scheme each year. Legislation provides a mandatory process by which the scheme should be reviewed each year, including the requirement to negotiate the reimbursement rate with requisite transport operators. This paper and the resulting approved Scheme is part of that consultation process.

Reimbursement Rate

- 4.8 Legislation sets out the method by which bus operators are reimbursed for ENCTS passengers; the aim is to ensure that operators are '**no better and no worse off**' for participating in the Scheme. Cumbria applies a reimbursement rate of 58% based on average fares. There are a number of different methodologies used by Local Authorities (LA) to calculate and apply the discount rate; they all ultimately result in a payment to the operator for a concessionary passenger.
- 4.9 In 2012/13 the reimbursement rate to operators was reduced from 65% to 58%. As a result the operators, on average, put up their fares by 10% to compensate for the reduction in the reimbursement rate. Hence, the Council did not achieve the savings anticipated and the passengers who did not have ENCTS entitlement paid more in increased fares.

Discretionary elements of the County Council's scheme

- 4.10 The County Council provides the statutory minimum in respect of ENCTS except for the following which are discretionary:
- a) Companion cards – these enable people with a concessionary pass due to disability to have a companion travel with them free of charge. There are currently 619 companion cards.
 - b) 24/7 cards – these enable people with disabilities to travel to work, training or day care at any time of the day. The statutory scheme is 09:30 to 23:00 Monday to Friday and all day Saturday, Sunday and weekends. There are currently 546 24/7 cards with an anticipated cost

of £0.049m. This initiative receives funding from the central budget available for Transport Services

- c) The Travel Concessions (eligible service)(Amendment) Order 2009 states that a service is not an eligible service under the mandatory scheme regulated by section 146 of the Transport Act 2000 if it operates primarily for the purposes of tourism or because of the historical interest of the vehicle. The current scheme includes all local bus services which include tourist routes.

The ENCTS Cumbria Scheme 2016/17

- 4.11 It is proposed that the current 2015/16 scheme be continued as the scheme for 2016/17. The proposed scheme is required to be published (on the web site and sent to Cumbria Bus Operators) by 1 December 2015 in order to meet the statutory requirements to notify operators regarding any changes and to enter into negotiations, with the Scheme to go live on 01 April 2016. Any substantial amendments to the final scheme would require a further report to Cabinet for their approval.
- 4.12 The following table sets a minimum time frame for negotiation with Bus Operators to achieve an implementation date of 01 April 2016.

Date	Event
01 Dec 2015	A TCA must publish reimbursement proposals in as much detail as possible to allow for meaningful negotiation, MINUS 4 MONTHS before final publication date – in our case that will mean publication on or before 01 December 2015
01 March 2016	A TCA to determine final reimbursement arrangements MINUS 28 DAYS before final publication date – in our case that means 01 March 2016.
June 2016	Last date for bus operators to appeal to the secretary of state (pRIORITY notice must be given to the TCA) is PLUS 56 DAYS from final publication date – end of June 2016

5.0 OPTIONS

Two options are provided in respect of the 2016/17 ENCTS scheme:

- 5.1 **Option A:** Cabinet approves the Scheme at Appendix 1 (which is effectively the current 2015/16 Scheme) as the 2016/17 scheme, with the basic reimbursement rate being maintained at 58% and retain paying ENCTS reimbursement on Tourist Routes.
- 5.2 **Option B:** Cabinet does not accept the Scheme at Appendix 1 and recommends amendments.

6.0 RESOURCE AND VALUE FOR MONEY IMPLICATIONS

- 6.1 The recommended option (Option A) for the ENCTS Cumbria scheme for 2016/17 is that the 2015/16 scheme be carried forward with the current

reimbursement rate of 58%. Assuming that passenger numbers and fares continue at current levels there would be an expectation that this would maintain the status quo.

7.0 LEGAL IMPLICATIONS

- 7.1 The County Council is the statutory travel concessionary authority.
- 7.2 Guidance from the Department for Transport, makes it clear that reimbursement should be calculated so that bus operators are “no better off and no worse off” by taking part in concessionary travel schemes. The “no better, no worse off” test is applied in relation to what the situation would have been in the absence of the scheme.
- 7.3 The concessionary travel schemes must not be used to provide hidden subsidy (or state aid) to bus operators, as this would be unlawful.
- 7.4 Travel concession authorities are free to use the methodology of their choice in calculating reimbursement of bus operations, provided that they comply with European regulation No 1370/2007 as well as the English law that governs concessionary travel reimbursement. Operators may challenge the reimbursement rate by way of appeal to the Secretary of State (and possibly judicial review).

8.0 CONCLUSION

- 8.1 The proposed ENCTS Cumbria scheme for 2016/17 is the Scheme attached at Appendix 1 with the reimbursement rate at 58%.

Dominic Donnini
Corporate Director - Environment & Community Services

26 November 2015

APPENDICES

Appendix 1 – CCC ENCTS Scheme 2016/17

Electoral Division(s): All

** Please remove whichever option is not applicable*

Executive Decision	Yes	<input type="checkbox"/>	
Key Decision	Yes	<input type="checkbox"/>	
If a Key Decision, is the proposal published in the current Forward Plan?	Yes	<input type="checkbox"/>	<input type="checkbox"/>
Is the decision exempt from call-in on grounds of urgency?		No	<input type="checkbox"/>

If exempt from call-in, has the agreement of the Chair of the relevant Overview and Scrutiny Committee been sought or obtained?

		N/A
--	--	-----

Has this matter been considered by Overview and Scrutiny?
If so, give details below.

Yes	
-----	--

Has an environmental or sustainability impact assessment been undertaken?

		N/A
--	--	-----

Has an equality impact assessment been undertaken?

Yes		
-----	--	--

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

Cabinet - 24 November 2014

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny.

BACKGROUND PAPERS

No background papers.

RESPONSIBLE CABINET MEMBER

Keith Little, Cabinet Member Highways and Transport

REPORT AUTHOR

Contact: David Jenkinson – Senior Manager Transport Services
Telephone No 07795307074
Email: david.jenkinson@cumbria.gov.uk

CUMBRIA CONCESSIONARY TRAVEL SCHEME 2016/17

1 Introduction

- 1.1 The Cumbria Concessionary Travel Scheme ("the Scheme") is made in accordance with and subject to the Transport Acts 1985 and 2000 as amended by the Concessionary Bus Travel Act 2007("the Acts"), and all such Regulations made thereunder.
- 1.2 The Scheme made by Cumbria County Council to provide concessionary travel to older and disabled persons as defined in Section 146 of the Transport Act 2000, the Travel Concessions (Eligibility) Act 2002 and the Concessionary Bus Travel Act 2007 (Commencement and Transitional Provisions) Order 2007.
- 1.3 The administration of the Scheme is the responsibility of Cumbria County Council. This includes reimbursements to the operators, the undertaking of surveys and the making and receiving of notices. Cumbria County Council may sub-contract any or all of these activities to other bodies.
- 1.4 This document covers the reimbursement arrangements for concessionary travel under the Transport Act 1985 as well as the statutory scheme introduced under the Transport Act 2000, as amended by the Concessionary Bus Travel Act 2007.
- 1.5 The Scheme will apply as from 1 April 2016.

2 Type of Concession

- 2.1 Persons eligible to receive the travel concessions under this Scheme will be entitled to receive concessions as set out in Schedule 2 and will be issued with a NoWcard English National Concessionary bus pass (a NoWcard) by Cumbria County Council if they have sole or principal residency in the county.
- 2.2 Other eligible persons who do not have a NoWcard issued by Cumbria County Council in this Scheme (i.e. holder of an English National Concessionary bus pass issued by another authority or a London Councils' Freedom pass with English National Concessionary details) will only be eligible for those concessions as set out in Schedule 2 Part I.
- 2.3 Concessions will only be available on production by the concessionaire of a valid bus pass. The use of any such pass will be subject to the conditions which are printed on the pass, and individual operators' Conditions of Carriage.
- 2.4 The initial NoWcard will be issued free of charge. The County Council will make a charge of £10.00 to issue a replacement pass to reflect the cost of its production and administration.

3 Area of the Scheme

- 3.1 The Scheme will apply to all eligible journeys starting within the administrative areas of Cumbria County Council and to journeys to and from Gretna in Dumfries & Galloway.

4 Services Covered by the Scheme

- 4.1 The Scheme will solely apply to Local Bus Services as defined by the Acts within the above area. The Scheme will exclude services not generally available to the general public, those ineligible for Bus Service Operator Grant, excursions, tours or express services, unless the express service is approved as eligible by Cumbria County Council in accordance with Schedule 2 Part II.
- 4.2 The Travel Concessions (Eligible Services) (Amendment) Order 2009 describe services that are deemed to be ineligible for reimbursement and they are listed in Schedule 2 Part 111. For the purposes of the Council's Scheme routes that the Council approve as routes being relevant to section C – will be eligible for reimbursement subject to Council approval.

5 Times When Concession Applies

- 5.1 The concessions shall apply at the times specified in Schedule 1 Part II and Schedule 2 Part I.

6 Eligibility Qualifications

- 6.1 All those persons who have been issued with and are in possession of a valid NoWcard, English National Concessionary bus pass or London Councils' Freedom pass at the time of travel will be eligible under the Scheme.
- 6.2 The eligibility of persons to a NoWcard who are normally resident in Cumbria are set out at 1.2 above and are set out in Schedule 1 Part I.

7 Commencing Date of the Scheme

- 7.1 The Scheme will commence on 1 April 2016.

8 Dates of Admission

- 9.1 All services to which the Scheme applies will be included from the first date on which the service operates.

9 Calculation of the Reimbursement of Operators

- 9.1 The objective will be to reimburse operators so that they are 'no better and no worse off' for participating in the Scheme.

- 9.2 The Scheme will use ITSO smart transactions for the calculation of reimbursement of operators. Where the percentage of ITSO smart transactions is lower than 98% on any route, Cumbria County Council reserve the right not to reimburse those manual transactions.
- 9.3 Reimbursement will be based on data specifying the following by route number:
- the number of concessionary passengers, pass type (concession, disabled, disabled + companion, 247 and 247 + companion)
 - issuing authority
 - ITSO smart or manual
 - total full fare equivalents
 - boarding and alighting stages should also be recorded.
- 9.4 Where electronic equipment is inoperative, back up data must be provided to include the number of passengers, ticket type and fares paid, together with concessionary passenger numbers and the full fare equivalents. Where surveys are required to validate the data because an operator has declined to participate in ITSO Smart transactions the full costs of the surveys will be deducted from the reimbursement due.
- 9.5 Whichever method is used to determine gross revenue foregone, operators will be required to declare for each payment period the total revenue and passengers carried for all passenger classes on each of its services.
- 9.6 Operators using the NoWcard operations support will receive two standard back office reports; the Class report and the Concessionary Breakdown report. These reports will also be provided to the County Council in accordance with 9.3 and 9.5. Additional back office reports that are requested by operators will be charged at £3.25 per report.

10 Calculation of Revenue Foregone

- 10.1 To allow for the effects of generated travel resulting from participation in the scheme, the identified gross revenue foregone will be reimbursed at the basic rate of 58%.
- 10.2 Operators have a statutory right of appeal against the Scheme or the terms of reimbursement. Any matter of dispute should be raised in the first instance with the County Council.
- 10.3 The net revenue foregone will be determined every month from the relevant adult single fare for the journey, adjusted for the estimated discount that would have been available to passengers making the journey. This is termed the product discount and is applicable to return tickets and day type tickets.
- 10.4 For each operator the following will be ascertained:
- The number of single, return and day tickets sold during the times when the ENCTS applies
 - The rates of discounts given on return and day tickets

- 10.5 Based on the information in clauses 10.3 and 10.4, the total full fare equivalent will be adjusted. This is based on the assumption that the same percentage of concessionary travel pass holders would purchase discounted tickets (day and return) as fee paying passengers in the absence of the scheme.
- 10.6 The shadow fare used for reimbursement will be capped at any maximum return or 'day rider' type fare available for the journey.
- 10.7 Any incorrect tickets issued to fare paying passengers which are brought to the attention of Cumbria County Council and which have an impact upon the reimbursement payment, will be taken into consideration and the reimbursement adjusted accordingly. Operators must take all reasonable steps to ensure that the concessionary ticket issued correctly shows the boarding stage and destination stage for the journey requested by the concessionary pass holder. The County Council may take reasonable steps to check the accuracy of concessionary tickets issued and claims made by operators. The Scheme shall not be liable for the cost of any concessionary tickets issued dishonestly or negligently by operators or their staff. Payments due to the operator in respect of the scheme shall, unless otherwise agreed by the County Council, be reduced by a sum equal to ten times any overcharge identified by the County Council.

11 Payment to Operators

- 11.1 Operators will be reimbursed on the basis of an invoice with supporting information detailed in sections 9 and 10. Those operators not using the NoWcard Operations Support shall supply data to Cumbria County Council within ten working days. All operators' invoices must be submitted monthly within fifteen working days of the month end. The County Council reserves the right not to reimburse operators if invoices are submitted outside of this timescale.
- 11.2 Cumbria County Council reserve the right to not pay an operator where the data provided does not comply with sections 9 and 10 of this scheme.

12 Certificate of Accuracy

- 12.1 Operators will be required to supply for each financial year the Scheme operates without the use of NoWcard back office system a Certificate of Accuracy (within the meaning of Regulation 16 of the Regulations) in respects of an audited statement of revenue and total passengers carried in each month.
- 12.2 The Certificate of Accuracy must be received before 30 June 2016. Failure of an operator to provide a properly authorised Certificate of Accuracy before this deadline could result in payments being suspended until the Certificate is received.
- 12.3 The County Council will not be liable for any costs associated with the production of a Certificate of Accuracy.

13 Ticket Machines

- 13.1 Existing ticket machines and depot readers provided by Cumbria County Council are subject to an annual maintenance charge of £120 per machine per year.
- 13.2 The maintenance charge covers all labour charges for fair wear and tear and an annual service of each machine. The charge covers spare parts unless replacement is necessary due to vandalism, misuse or accidental damage. Call out response will normally be provided within 48 hours.
- 13.3 If operators opt out of the maintenance contract then they will be liable for providing evidence of qualified maintenance and evidence of an annual service of the machines. Please note that Concessionary Travel may not be reimbursed unless evidenced by electronic back office data.

14 Passenger Surveys

- 14.1 An operator taking part in the Scheme will allow accredited representatives of the County Council holding a valid form of identity to travel free of charge on the vehicles of the operator for the purpose of:
- a) Inspection of tickets for the purpose of counting or estimating the value of travel undertaken by concessionary pass holders.
 - b) Obtaining information on other matters relating to the journeys made by passengers who are not eligible to receive concessions and necessary to the calculations by the authorities of reimbursement payments.
 - c) Other surveys relating to the collecting of data for National Indicators and the Cumbria Agreement.

15 Changes in Services and Fares

- 15.1 Any operator taking part in the Scheme will supply Cumbria County Council with details of any changes to services which are part of the Scheme at least fifty six days in advance of the date the changes will take effect. Changes to fares should be notified at least seven days before changes take effect and the appropriate fare table(s) must be provided to Cumbria County Council.

16 Withdrawal from the Scheme

- 16.1 An operator voluntarily participating in a Transport Act 1985 Scheme (i.e. a concessionary travel scheme which is more generous than that provided by the Transport Act 2000 as amended by the Concessionary Bus Travel Act 2007) must give forty two days' notice of its intention to withdraw. An operator cannot withdraw from the National Concessionary Travel Scheme.

17 Identification of Vehicles and Notices

- 17.1 Any operator taking part in the Scheme must carry in or on any vehicle used in connection with this Scheme any mark, identification or notice, as may be required from time to time by Cumbria County Council, to indicate that eligible passengers using the vehicle are entitled to travel at a concessionary rate or to disseminate information to concessionary pass holders.

18 Hotlisting

- 18.1 Operators will work with scheme administrators during 2016/17 to ensure the development of an agreed 'Hotlisting' process to be used throughout the Nowcard region for concessionary travel and any future ticketing schemes, for example, Nowstar STR.

SCHEDULE 1

PART I

ELIGIBILITY CRITERIA FOR THE ISSUE OF CONCESSIONARY TRAVEL PASSES TO ELDERLY AND DISABLED PERSONS

A person is eligible for concessionary travel by virtue of age if they are a woman of pensionable age or a man born on the same day as a woman of pensionable age and who resides in the county.

A person who resides in the County and:

- a) is blind or partially sighted
- b) is profoundly or severely deaf
- c) is without speech
- d) has a disability, or has suffered an injury, which has a substantial and long term adverse effect on his ability to walk
- e) does not have arms or has long-term loss of the use of both arms
- f) Has a learning difficulty, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning. These disabilities must have started before adulthood and have a lasting effect on development.
- g) would, if he applied for the grant of a licence to drive a motor vehicle under Part III of the Road Traffic Act 1988 have his application refused pursuant to section 92 of that Act (physical fitness) otherwise than on the grounds of persistent misuse of drugs or alcohol

PART II

TRAVEL CONCESSIONS FOR COMPANIONS OF DISABLED PERSONS

Persons eligible for a NoWcard disabled concessionary bus pass issued by Cumbria County Council may apply for a Companion Pass which entitles the companion to concessionary travel as set out at Schedule 2 Part I.

24/7 SCHEME

Persons eligible for a NoWcard disabled concessionary bus pass issued by Cumbria County Council may apply for 24/7 Pass which entitles the companion to concessionary travel as set out at Schedule 2 Part I including travel before 9.30am Monday to Friday to access employment, training or day care services. 24/7 disabled concessions will be reimbursed at 58%.

SCHEDULE 2

CONCESSIONS FOR ELDERLY PERSONS AND DISABLED PERSONS

PART I

Holders of valid English National Concessionary bus passes, including holders of NoWcard English National Concessionary bus passes issued by Cumbria County Council, can travel free of charge on journeys on local bus services:

- a. which commence at a boarding point within the Scheme area
- b. which operate between 09:30 and 23:00 Mondays to Fridays
- c. at any time on Saturdays, Sundays or Bank Holidays

Journeys commencing outside the Scheme area, unless otherwise specified in Schedule 2 Part II, are not covered by this agreement and the fare charged and the reimbursement of operators will be in accordance with the concessionary travel scheme for the area in which the journey commences.

For the avoidance of doubt, this includes all English National Concessionary bus passes issued by other authorities and London Councils' Freedom passes which are not party to this Scheme.

PART II

Express or Limited Stop Services

An "Express" service shall be so treated for the purpose of the Scheme if:

- a. It is registered as a Limited Stop service with the Traffic Commissioner(s):
or
- b. It is not available for boarding and alighting at all bus stops along its route: or
- c. Its route includes any section of Motorway

Operators of such services are required to provide Cumbria County Council, as administrators of the scheme, with full details including timetables and fare tables of the express service within seven days of the date of the agreement or of registration. The council will give a decision within fourteen days as to whether, in its view, the service complies with the Regulations and is an eligible local service.

PART III

The Travel Concessions (Eligible Services) (Amendment) Order 2009

Eligible Services

The Travel Concessions (Eligible Services) Order 2002(c) section 146 of the Transport Act 2000 sets out what is an eligible service”.

- (1) A service is not an eligible service if
 - (a) more than half of the accommodation on the vehicle by means of which the service is provided can be reserved by members of the general public in advance of travel;
 - (b) it is intended to operate for less than six consecutive weeks;
 - (c) it is operated primarily for the purposes of tourism or because of the historical interest of the vehicle;
 - (d) it is a bus substitution service; or
 - (e) the fare for the service includes a special amenity element. A fare is to be regarded as including a special amenity element if it is significantly high in relation to the general level of fares for comparable journeys.