
STATUTORY INSTRUMENTS

2023 No. 1369

The Public Service Obligations in Transport Regulations 2023

PART 1

Introductory provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Service Obligations in Transport Regulations 2023 and come into force on 25th December 2023.

(2) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

“bus” means a motor vehicle, other than a tram, which is adapted to carry more than sixteen passengers;

“carriageway” has the same meaning as in the Highways Act 1980(1), or in Scotland the Roads (Scotland) Act 1984(2);

“competent authority” means any public authority or group of public authorities which has a power or duty to secure the provision of public passenger transport services in a particular geographical area or any other body authorised to exercise such a power or duty;

“competent local authority” means any competent authority whose geographical area of competence is not national, and includes a “local transport authority” as defined in section 108(4) of the Transport Act 2000 (for England and Wales)(3), a “London transport authority” as defined in section 162(1) of that Act, Transport for London(4), and a “local transport authority” as defined in section 82 of the Transport (Scotland) Act 2001 (for Scotland)(5);

“direct award” means the award of a public service contract to a public service operator without any prior competitive tendering procedure;

“exclusive right” means a right entitling a public service operator to operate public passenger transport services on a particular route or network or in a particular area to the exclusion of any other such operator;

“general rule” means a general rule for the operation of public transport which applies to all operators of public passenger transport services of the same type in a geographical area for which a competent authority is responsible;

“interested party” means—

(1) 1980 c. 66. See section 329(1) for definition of “carriageway”.

(2) 1984 c. 54. See section 151(1) and (2) for definition of “carriageway”.

(3) 2000 c. 38.

(4) Transport for London is a body corporate established by section 154 of the Greater London Authority Act 1999 (c. 29).

(5) 2001 asp. 2.

(a) a person whose interests may be affected by the competent authority’s decision to enter into a public service contract or make a general rule, or

(b) the Secretary of State;

“internal operator” means a person—

(a) over whom a competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments, and

(b) who is legally distinct from the authority or authorities exercising control;

“operating risk” means a risk that the public service operator will not be able to recover its costs in connection with the supply and operation of the works or the public passenger transport services, where the factors giving rise to that risk are—

(a) reasonably foreseeable at the time of the award, and

(b) arise from matters outside the control of the competent authority and the public service operator;

“publication date” in relation to a public service contract or general rule means the date on which information about the contract or rule is published as required by regulation 23;

“public authority” means a person that is—

(a) wholly or mainly funded out of public funds, or

(b) subject to public authority oversight,

and does not operate on a commercial basis;

“public passenger transport services” means passenger transport services in the general interest provided to the public;

“public service compensation” means any benefit, particularly financial, granted directly or indirectly by a competent authority from public funds in consideration of implementation of a public service obligation;

“public service contract” means—

(a) one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations, or

(b) where the competent authority provides the services or entrusts the provision of such services to an internal operator, a decision adopted by the competent authority containing conditions under which those services must be performed;

“public service obligation” means a requirement determined by a competent authority in accordance with regulation 6 in order to secure the provision of public passenger transport services that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward;

“public service operator” means any public or private supplier, including an internal operator, or group of such suppliers which operates public passenger transport services or any public body which provides public passenger transport services;

“procurement” means the award, entry into and management of a public service contract;

“rail” means a system of transport employing parallel rails which—

(a) provide support and guidance for vehicles on flanged wheels, and

(b) form a track which is either of a gauge of at least 350 millimetres or crosses a carriageway, whether or not on the same level,

but does not include a tramway or any other form of track-based mode;

“road”—

- (a) in relation to England and Wales, means any length of highway and of any other road to which the public has access, and includes bridges over which a road passes, and
- (b) in relation to Scotland, means any road within the meaning of the Roads (Scotland) Act 1984(6);

“small or medium-sized enterprise” means a supplier that has—

- (a) fewer than 250 staff, and
- (b) a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million;

“track-based mode” means a mode of transport in which the vehicle derives support or guidance from a track or other structure not being a road;

“tram” means a vehicle that operates on a tramway;

“tramway” has the same meaning as in section 67(1) of the Transport and Works Act 1992(7);

“value” means the total remuneration, before VAT, of a public service operator, including compensation of whatever kind paid by a competent authority and revenue from the sale of tickets which is not repaid to that competent authority.

(2) For the purpose of the definition of “public authority” in paragraph (1)—

- (a) examples of factors to be taken into account in determining whether a person operates on a commercial basis are—
 - (i) whether the person operates on the basis that its losses would be borne, or its continued operation secured, by a public authority (whether directly or indirectly);
 - (ii) whether the person contracts on terms more favourable than those that might reasonably have been available to it had it not been associated with a public authority;
 - (iii) whether the person operates on a market that is subject to fair and effective competition;
- (b) a person is subject to public authority oversight if the person is subject to the management or control of—
 - (i) one or more public authorities, or
 - (ii) a board more than half of the members of which are appointed by one or more public authorities.

Scope

3.—(1) Subject to paragraphs (2) and (4), these Regulations apply to national and international public passenger transport services by rail, other track-based modes and road.

(2) These Regulations do not apply to—

- (a) heritage passenger transport services, or
- (b) works concession contracts.

(3) For the purposes of this regulation—

“heritage passenger transport services” means transport services which are operated primarily for their historical interest or for the purposes of tourism;

(6) 1984 c. 54. See section 151(1) for the definition of “road”.

(7) 1992 c. 42.

“works concession contract” means a contract in writing for the supply, for pecuniary interest, of works to a competent authority where—

- (a) at least part of the consideration for that supply is a right for the supplier to exploit the works, and
 - (b) under the contract the public service operator is exposed to a real operating risk.
- (4) This regulation does not apply for the purposes of regulation 28 and Schedule 3.

Objectives

4.—(1) When exercising functions under these Regulations, a competent authority in England or Wales must—

- (a) have regard to the importance of—
 - (i) delivering value for money,
 - (ii) maximising public benefit,
 - (iii) sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions, and
 - (iv) acting, and being seen to act, with integrity;
- (b) treat suppliers the same unless a difference between the suppliers justifies different treatment, and
- (c) if it considers that different treatment is justified in a particular case, take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.

(2) In carrying out a procurement under these Regulations, a competent authority must—

- (a) have regard to the fact that small or medium-sized enterprises may face particular barriers to participation, and
- (b) consider whether such barriers can be removed or reduced.

(3) In carrying out a competitive tendering procedure under these Regulations, a competent authority in Scotland must—

- (a) act in a transparent and proportionate manner,
- (b) treat suppliers equally and without discrimination unless a difference between the suppliers justifies different treatment, and
- (c) where it considers that different treatment is justified in a particular case, take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.

(4) A competent authority in Scotland must not design a procurement with the intention of excluding it from the application of these Regulations or of artificially narrowing competition.

(5) Competition is deemed to be artificially narrowed for the purposes of paragraph (4) where the design of the procurement is made with the intention of unduly favouring or disadvantaging any particular supplier.