

2020 No. 252

EXITING THE EUROPEAN UNION

TRANSPORT

**The Regulation (EC) No 1370/2007 (Public Service Obligations
in Transport) (Amendment) (EU Exit) (Northern Ireland)
Regulations 2020**

Made - - - 10th November 2020

Coming into operation - 11.00 p.m. on 31st December 2020

The Department for Infrastructure, in exercise of the powers conferred by section 11 of, and paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) (Northern Ireland) Regulations 2020 and come into force on IP completion day(b).

Amendment of Regulation (EC) No 1370/2007

2. Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70(c) is amended as follows.

3. In Article 1 (purpose and scope)—

- (a) in the first subparagraph of paragraph 1 omit “, in accordance with the rules of Community law,”.
- (b) in paragraph 2—
 - (i) in the first subparagraph omit the second sentence;
 - (ii) in the second subparagraph for “of the Member States on whose territory” substitute “in whose geographical area”;
- (c) for paragraph 3 substitute—

(a) 2018 c.16

(b) Section 39, European Union (Withdrawal Agreement) Act 2020

(c) O.J. No. L 315, 3.12.2007, p.1, as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 (O.J. No. L 354, 23.12.2016, p. 22)

“3. This Regulation shall not apply to “works concession contracts” as defined in regulation 3(2) of the Concession Contracts Regulations 2016(a).”

4. In Article 2 (definitions)—

- (a) in paragraph (b), in the definition of “competent authority”, omit “of a Member State or Member States”;
- (b) in paragraph (i), in the definition of “public service contract”, omit “depending on the law of the Member State,”.

5. In Article 2a (specification of public service obligations), in paragraph (1)—

- (a) in the second subparagraph omit “, in accordance with Union law”;
- (b) in the third subparagraph omit “in the Member States”;
- (c) omit the fourth subparagraph.

6. In Article 3 (public service contracts and general rules) omit paragraph 3.

7. In Article 4 (mandatory content of public service contracts and general rules)—

- (a) in paragraph 4, in the third subparagraph, omit the second sentence;
- (b) in paragraph 4a, for “Union law, national law”, substitute “any enactment, rule of law”;
- (c) for paragraph 4b substitute—

“4b. The Transfer of Undertakings (Protection of Employment) Regulations 2006(b) shall apply to a change of public service operator where such a change constitutes a relevant transfer within the meaning of regulation 2(1) of those Regulations.”;

(d) in paragraph 5—

- (i) for “Without prejudice to national and Community law, including collective agreements” substitute “Without prejudice to any enactment, rule of law or collective agreements”;
- (ii) for “transfer within the meaning of Directive 2001/23/EC” substitute “relevant transfer as defined in regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006”;
- (e) in paragraph 6 omit “, in accordance with national law,” and for “While respecting Directive 2001/23/EC” substitute “While respecting the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006”;
- (f) in paragraph 7 omit “, in accordance with national and Community law,”;
- (g) in paragraph 8 omit the last sentence.

8. In Article 5 (award of public service contracts)—

(a) for paragraph 1 substitute—

“1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts as defined in the relevant utilities contracts regulations and public service contracts as defined in the relevant public contracts regulations for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Regulations where such contracts do not take the form of services concession contracts. Where such service contracts or public service contracts are to be awarded in accordance with those Regulations, the provisions of paragraphs 2 to 6 of this Article shall not apply.

For the purposes of this paragraph:

(a) S.I. 2016/273, amended by S.I. 2019/560, 2019/623.

(b) S.I. 2006/246, amended by S.R. 2006/177, S.I. 2009/592, 2010/93, 2014/16, 2014/386, 2014/853.

- the relevant utilities contracts regulations are the Utilities Contracts Regulations 2016(a);
 - the relevant public contracts regulations are the Public Contracts Regulations 2015(b); and
 - a “services concession contract” is as defined in regulation 2(1) of the Concession Contracts Regulations 2016(c).”;
- (b) in paragraph 2, in the first subparagraph—
- (i) for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law”;
 - (ii) in point (a) omit “In accordance with Community law,”;
- (c) in paragraph 3a—
- (i) in the first subparagraph for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law”;
 - (ii) in the second subparagraph omit “and shall inform the Commission thereof without undue delay”;
- (d) in paragraph 3b, in the second subparagraph for “in the Official Journal of the European Union” substitute “in such form and manner as they consider appropriate”;
- (e) in paragraph 4—
- (i) in the first subparagraph for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law”, and in point (a) for “EUR 1 000 000” substitute “£875,000” and for “EUR 7 500 000” substitute “£6,500,000”;
 - (ii) in the second subparagraph for “EUR 2 000 000” substitute “£1,750,000”;
- (f) in paragraph 4a—
- (i) in the first subparagraph for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law”;
 - (ii) in the second subparagraph omit “and shall inform the Commission thereof within one month of its publication”;
 - (iii) omit the third subparagraph;
- (g) in paragraph 4b, in the first subparagraph for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law” and for the words from “is excluded” to the end substitute “comprises a network of the kind referred to in regulation 3(7)(a) and (b) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016” (d);
- (h) in paragraph 6 for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law”.

9. In Article 5a (rail rolling stock), in paragraph 2 omit “in accordance with national law and”.

10. In Article 6 (public service compensation) omit paragraph 2.

11. In Article 7 (publication)—

- (a) in paragraph 1 omit “in the Member State concerned” and omit the final sentence;
- (b) in paragraph 2, for “in the Official Journal of the European Union” substitute “on its website”.

(a) S.I. 2016/274, amended by S.I. 2016/696, 2019/489, 2019/560, 2019/623, 2019/624. See regulation 2(1) for the definition of a “service contract”.

(b) S.I. 2015/102, amended by S.I. 2015/1472, 2016/274, 2016/274, 2016/275, 2016/696, 2019/489, 2019/560, 2019/623, 2019/624. See regulation 2(1) for the definition of “public service contracts”.

(c) S.I. 2016/273, to which there are amendments not relevant to these Regulations.

(d) S.I. 2016/420, to which there are amendments not relevant to these Regulations.

12. In Article 8 (transition)—

(a) for paragraph 1, substitute—

“1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts as defined in the relevant utilities contracts regulations and public service contracts as defined in the relevant public contracts regulations for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Regulations where such contracts do not take the form of services concession contracts. Where such service contracts or public service contracts are to be awarded in accordance with those Regulations, the provisions of paragraphs 2 to 4 of this Article shall not apply.

For the purposes of this paragraph:

- the relevant utilities contracts regulations are the Utilities Contracts Regulations 2016;
 - the relevant public contracts regulations are the Public Contracts Regulations 2015; and
 - a “services concession contract” is as defined in regulation 2(1) of the Concession Contracts Regulations 2016.”;
- (b) in paragraph 2, in the third subparagraph for “Member States” substitute “competent authorities” and omit the fourth subparagraph;
- (c) in paragraph 3, in the third subparagraph omit “and provided that the Commission has given its prior approval”;
- (d) in paragraph 4 omit the third subparagraph.

13. Omit Article 11 (reports).

14. In the text immediately after Article 12 omit “and directly applicable in all Member States”.

15. In the Annex, in paragraph 6, omit “in a given Member State”.

Transitional provision

16. Nothing in these Regulations affects the validity of the—

- (a) award of a public service contract, or
- (b) extension of a public service contract,

where an action in relation to the award or extension was taken before exit day in accordance with Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 as it had effect in domestic law at that time.

Sealed with the Official Seal of the Department for Infrastructure on
2020

10th November



Bernie Rooney
A senior officer of the
Department for Infrastructure

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations are made in exercise of the powers conferred by section 11 of, and paragraph 1(1) of Schedule 2 and paragraphs 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the Act”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraph 3 of schedule 2) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (“Regulation 1370/2007”).

Regulations 2 to 15 make amendments to Regulation 1370/2007 which include the omission of references to Member States, and amendments to obligations of or in relation to the European Commission and amounts of money in Euros.

Regulation 16 makes transitional provision.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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