

## **EXPLANATORY MEMORANDUM TO**

### **SR 2021 No. 337**

#### **The Regulation (EC) No 1370 2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) (Northern Ireland) Regulations 2021**

### **1. Introduction**

This Explanatory Memorandum has been prepared by the Department for Infrastructure to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

### **2. Purpose**

These Regulations are made 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 (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.

### **3. Background**

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 (EC) No 1370/2007”).

Regulation 2(2) amends Article 1 of Regulation (EC) No 1370/2007 to remove references to community law, member states geographical territory and to disapply the retained EU regulation to works concession contracts. This regulation ensures that the retained version of Regulation (EC) No 1370/2007 cannot apply in instances where a concession contract has been awarded in accordance with ‘The Concession Contracts Regulations 2016’. In so doing, this ensures that Article 1(3) of Regulation (EC) No 1370/2007 can operate effectively post transition period and retain the principle that the public funding of transport can be delivered through a public service obligation or via a concessions contract, but not both.

Regulation 2(3) amends Article 2 of Regulation (EC) No 1370/2007 to omit references to member states and the law of member states.

Regulation 2(4) amends Article 2a of Regulation (EC) No 1370/2007 to omit references to member states and the law of member states.

Regulation 2(5) amends Article 3 of Regulation (EC) No 1370/2007 which provides for exclusions from the regulation with respect to financial compensation for public service obligations which establish maximum tariffs for

pupils, students, apprentices and persons with reduced mobility. The purpose of the amendment is to remove references to EU law which are not retained and also to remove the requirement to engage with EU institutions after the end of the transition period. The removal of Article 3(3) does not prevent the Department establishing general rules with respect to maximum tariffs in future either for all passengers or specific categories of passengers, such as pupils, students, apprentices and persons with reduced mobility. However, such general rules will now come under the scope of the Regulation.

Regulation 2(6) amends Article 4 of Regulation (EC) No 1370/2007 to remove the requirement to notify the European Commission of the reasons justifying the extension of a public service obligation contract. This regulation also amends Article 4 to remove any references to EU law, and to replace EU employment protections with those afforded by 'The Transfer of Undertakings (Protection of Employment) Regulations 2006'. Further, this regulation amends the remainder of Article 4 to ensure the changes mentioned previously can operate effectively.

Regulation 2(7) amends Article 5 of Regulation (EC) No 1370/2007 to replace references to specific EU directives and EC regulations with references to the appropriate UK statute covering utilities contracts and public service contracts. This regulation also removes the more general references to EU law in the remainder of Article 5.

Regulation 2(8) amends Article 5a of Regulation (EC) No 1370/2007 to remove an inoperable term as result of the UK exiting the EU.

Regulation 2(9) amends Article 6 of Regulation (EC) No 1370/2007 to remove the requirement to provide information to the European Commission with respect to public service compensation.

Regulation 2(10) amends Article 7 of Regulation (EC) No 1370/2007 to omit references to member states and replace the requirement to publish information in the Official Journal of the European Union with a commitment to publish information on the Department's website.

Regulation 2(11) amends Article 8 of Regulation (EC) No 1370/2007 to replace references to specific EU directives and EC regulations with references to the appropriate UK statute covering utilities contracts and public service contracts. This regulation also removes the more general references to EU law in the remainder of Article 8.

Regulation 2(12) removes Article 11 of Regulation (EC) No 1370/2007 to remove the requirement to provide information to the European Commission.

Regulation 2(13) amends Article 12 of Regulation (EC) No 1370/2007 to omit references to member states.

Regulation 2(14) amends the annex to Regulation (EC) No 1370/2007 to omit references to member states.

Regulation 3 makes transitional provisions.

#### **4. Consultation**

As the amendments proposed by this Instrument are being made to transpose amendments arising from the UK's current responsibilities within the EU, and do not introduce a change to policy, the intention of the law or day to day operations, it was considered that there was no requirement for formal consultation on the proposed amendments.

#### **5. Equality Impact**

The Department has considered the proposed legislative provisions against the section 75 criteria and has screened out the requirement for an Equality Impact Assessment in relation to these legislative proposals.

#### **6. Regulatory Impact**

The Department has considered the proposed legislative provisions and has identified no costs associated with the introduction of the legislation and has screened out the requirement for a Regulatory Impact Assessment.

#### **7. Financial Implications**

None.

#### **8. Section 24 of the Northern Ireland Act 1998**

The proposed Rule has been subject to checks in relation to section 24 and no effects on Community Law or Convention Rights have been identified.

#### **9. EU Implications**

None.

#### **10. Parity or Replicatory Measure**

None.

#### **11. Additional Information**

Not applicable.