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STATUTORY INSTRUMENTS

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**2023 No. 1369**

**The Public Service Obligations in Transport Regulations 2023**

**PART 5**

**Enforcement**

**Actions in respect of a failure to comply with these Regulations**

**24.—**(1) An action in respect of a failure by a competent authority to comply with these Regulations in deciding to enter into a public service contract or make a general rule may not be brought after the end of the period of one month beginning with whichever is the latest of—

- (a) if the interested party has made a request for information under regulation 23(3) (right to request reasons for direct award), the date on which the authority forwards the reasons for its decision in accordance with that provision,
- (b) if the interested party has made a request for information under regulation 26 (pre-action information requests), the date on which the notice under paragraph (3) of this regulation is given, or
- (c) in any other case, the publication date for the contract or rule.

(2) A court may extend the time limit provided for in paragraph (1) where it considers it appropriate to do so in the circumstances.

(3) For the purpose of paragraph (1)(b), a competent authority must give notice to the interested party that the authority has provided information in response to a request for information under regulation 26 (pre-action information requests).

(4) If the action is an application for judicial review, section 31 of the Senior Courts Act 1981(1) (applications for judicial review) applies to the application as if, in subsection (3) of that section, for “has a sufficient interest in the matter to which the application relates”, there were substituted “is an interested party within the meaning of regulation 2 of the Public Service Obligations in Transport Regulations 2023”.

(5) If the action is an application to the supervisory jurisdiction of the Court of Session, section 27B of the Court of Session Act 1988(2) (requirement for permission) applies to the application as if, in subsection (2)(a) of that section, for “can demonstrate a sufficient interest in the subject matter of the application”, there were substituted “is an interested party within the meaning of regulation 2 of the Public Service Obligations in Transport Regulations 2023”.

(6) In this regulation “action” includes any proceeding in a court of law.

**Recovery orders**

**25.—**(1) A court may make a recovery order if—

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(1) 1981 c. 54.  
(2) 1988 c. 36.

- (a) in exercise of its powers, it grants relief in respect of a decision to enter into a public service contract, or make a general rule, under which a subsidy is given to a public service operator, and
  - (b) in granting that relief the court finds that the decision did not comply with these Regulations.
- (2) A recovery order is an order that—
- (a) confers a right on a competent authority that has given the subsidy to recover the amount of that subsidy from the beneficiary, and
  - (b) requires the authority to exercise that right in accordance with the order.
- (3) A recovery order may—
- (a) provide for how the right to recover a subsidy under the order is to be exercised;
  - (b) require that the right is exercised by such time as the order may specify;
  - (c) relate to the whole of a subsidy or to such part as the order may provide;
  - (d) require the payment of interest in accordance with the order.
- (4) In this regulation, “subsidy” has the same meaning as in the Subsidy Control Act 2022<sup>(3)</sup>.

#### **Pre-action information requests**

**26.**—(1) An interested party may make a request to a competent authority for information about its decision to enter into a public service contract or make a general rule.

- (2) A request under paragraph (1)—
- (a) must be made in writing before the end of the period of one month beginning with the publication date for the contract or rule to which the request relates, and
  - (b) must state that it is being made only for the purpose of deciding whether to bring proceedings before a court on the ground that the decision to enter into the contract or make the rule did not comply with these Regulations.
- (3) Where a competent authority receives a request under paragraph (1), the authority must provide such information as would enable, or assist in, the making of a determination as to whether the decision complied with these Regulations.
- (4) The information must be provided by the competent authority—
- (a) in writing, and
  - (b) within 28 days of receiving the request for information.
- (5) In providing information, a competent authority may impose such restrictions as it considers proportionate in order to protect—
- (a) commercially sensitive information;
  - (b) confidential information;
  - (c) information subject to legal privilege;
  - (d) information the disclosure of which would be contrary to the public interest.
- (6) Information provided in response to a request made under this section may be used only—
- (a) for the purpose for which it was requested, and
  - (b) in accordance with any restrictions imposed by the competent authority under paragraph (5).

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(3) 2022 c. 23. See section 2(1) for the definition of “subsidy”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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