

SCHEDULE 1

Regulation 21

Permitted modifications

Provided for in the public service contract

1. A modification is a permitted modification if—
 - (a) the possibility of the modification is unambiguously provided for in—
 - (i) the public service contract as awarded, and
 - (ii) a notice for the award of that contract published under regulation 22 or 23, and
 - (b) the modification would not change the overall nature of the public service contract.

Emergency

2. A modification is a permitted modification if its purpose could otherwise be achieved by the direct award of a public service contract under regulation 16.

Unforeseeable consequences

3. A modification is a permitted modification if—
 - (a) the circumstances giving rise to the modification could not reasonably have been foreseen by the competent authority before the award of the public service contract,
 - (b) the modification would not change the overall nature of the public service contract, and
 - (c) the modification would not increase the estimated value of the public service contract by more than 50%.

Materialisation of a known risk

4. A modification is a permitted modification if—
 - (a) the competent authority considers that—
 - (i) a known risk has materialised otherwise than as a result of any act or omission of the competent authority or the operator,
 - (ii) because of that fact, the public service contract cannot be performed to the satisfaction of the competent authority,
 - (iii) the modification goes no further than necessary to remedy that fact, and
 - (iv) awarding a further public service contract under these Regulations, instead of modifying the contract, would not be in the public interest in the circumstances, and
 - (b) the modification would not increase the estimated value of the public service contract by more than 50% ignoring, for the purpose of estimating the value of the public service contract, the fact that the risk has materialised.
5. In paragraph 4, a “known risk” means a risk that—
 - (a) the competent authority considered—
 - (i) could jeopardise the satisfactory performance of the public service contract, but
 - (ii) because of its nature, could not be addressed in the public service contract as awarded, and
 - (b) was identified in a notice for the award of the public service contract published under regulation 22, including by reference to—

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- (i) its meeting the description in sub-paragraph (a), and
- (ii) the possibility of modification under paragraph 4.

6. In considering whether awarding a new public service contract would be in the public interest for the purposes of paragraph 4, a competent authority—

- (a) must consider whether a new public service contract could provide more value for money, and
- (b) may consider technical and operational matters.

Additional services

7. A modification is a permitted modification if—

- (a) the modification provides for the provision of services in addition to the services already provided for in the public service contract,
- (b) using a different operator would result in the provision of services that are different from, or incompatible with, those already provided for in the public service contract,
- (c) the competent authority considers that the difference or incompatibility would result in—
 - (i) disproportionate technical difficulties in operation or maintenance or other significant inconvenience, and
 - (ii) the substantial duplication of costs for the authority, and
- (d) the modification would not increase the estimated value of the public service contract by more than 50%.

Transfer on corporate restructuring

8. A novation or assignment (or in Scotland, assignation) of a public service contract to an operator is a permitted modification if it is required following a corporate restructuring or similar circumstance.

SCHEDULE 2

Regulation 23

Information to be published about a public service contract or general rule

The information is—

- (a) the name and address of the competent authority,
- (b) the type of award,
- (c) the services, described in such detail that a reader of the notice can compare the services to those described in the notice published in respect of the public service contract under regulation 22, and the geographical areas covered by the award,
- (d) the start date and duration of the public service contract or general rule,
- (e) the date on which the public service contract was entered into,
- (f) a description of the parameters of the financial compensation,
- (g) where the award is made on the basis of a competitive tendering procedure—
 - (i) the award criteria,
 - (ii) the number of tenders received, including the number received from small or medium-sized enterprises,

- (h) where the award is made under regulation 18 or 19, the reasons for the decision to make the award, including the reasons for making the award under that regulation,
- (i) the name and address of the public service operator and whether or not—
 - (i) the public service operator is a small or medium-sized enterprise,
 - (ii) the public service contract was awarded to a group of economic operators (whether acting as a joint venture, consortium or other form of joint enterprise),
- (j) where appropriate, a statement as to whether the public service contract has been, or may be, subcontracted,
- (k) a statement of the right to take enforcement action under Part 5 of these Regulations,
- (l) the date and reference of any previous publication on the competent authority’s website relevant to the public service contract or general rule,
- (m) where the public service contract or general rule involves the grant of a subsidy—
 - (i) the legal basis and policy objective or purpose of the subsidy,
 - (ii) the name of the recipient of the subsidy,
 - (iii) the date of the grant of the subsidy, the duration of the subsidy and any other time limits attached to the subsidy,
 - (iv) the amount of the subsidy or the amount budgeted for the subsidy,
- (n) the date of publication of the information on the website in accordance with regulation 23(2).

SCHEDULE 3

Regulation 28

Consequential amendments and revocations

PART 1

Consequential amendments

CHAPTER 1

Primary legislation

Amendment of the Railways Act 1993

1.—(1) The Railways Act 1993(1) is amended as follows.

(2) In section 136 (grants and subsidies), in subsection (11), for the definition of “the public service obligations regulations” substitute—

““the public service obligations regulations” means the Public Service Obligations in Transport Regulations 2023;”.

(1) 1993 c. 43. Section 136 was amended by the Transport Act 2000 (c. 38), Schedule 16, paragraph 51 and the Railways Act 2005 (c. 14), Schedule 11, paragraph 14 and Schedule 13, Part 1, and by S.I. 2010/402. There have been other amendments to section 136, but none is relevant.

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Amendment of the Government of Wales Act 2006

2.—(1) The Government of Wales Act 2006(2) is amended as follows.

(2) In Schedule 7A (reserved matters), in paragraph (c) of the exception relating to Section E2 (rail transport), for “Regulation (EC) No. 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road” substitute “the Public Service Obligations in Transport Regulations 2023”.

Amendment of the Subsidy Control Act 2022

3.—(1) The Subsidy Control Act 2022(3) is amended as follows.

(2) In section 48 (legacy and withdrawal agreement subsidies), for subsection (1)(b) substitute—

“(b) a subsidy given in accordance with—

(i) Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road,

(ii) that Regulation as it has effect by virtue of regulation 28(2) of the Public Service Obligations in Transport Regulations 2023, or

(iii) the Public Service Obligations in Transport Regulations 2023,

(and any such subsidy is to be treated for the purposes of this Act as if it were given in accordance with a subsidy scheme).”.

CHAPTER 2

Secondary legislation

Amendment of the Cleaner Road Transport Vehicles (Scotland) Regulations 2010

4.—(1) The Cleaner Road Transport Vehicles (Scotland) Regulations 2010(4) are amended as follows.

(2) In regulation 2, in the definition of “operator” for “Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road, as amended from time to time” substitute “regulation 2 of the Public Service Obligations in Transport Regulations 2023”.

Amendment of the Cleaner Road Transport Vehicles Regulations 2011

5.—(1) The Cleaner Road Transport Vehicles Regulations 2011(5) are amended as follows.

(2) In regulation 2, in the definition of ““public service contract” and “public service obligation”” for “Regulation (EC) No 1370” to the end of the definition substitute “the Public Service Obligations in Transport Regulations 2023”.

Amendment of the Concession Contracts (Scotland) Regulations 2016

6.—(1) The Concession Contracts (Scotland) Regulations 2016(6) are amended as follows.

(2) In regulation 12(1)(l) (exclusions: specific service contracts) for “Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road” substitute “the Public Service Obligations in Transport Regulations 2023, except

(2) 2006 c. 32. Schedule 7A to the Government of Wales Act 2006 was inserted by Schedule 1 to the Wales Act 2017 (c. 4).

(3) 2022 c. 23.

(4) S.S.I. 2010/390.

(5) S.I. 2011/1631.

(6) S.S.I. 2016/65.

where such services are provided by means of a motor vehicle, other than a tram, which is adapted to carry not more than sixteen passengers”.

Amendment of the Railways (Access, Management and Licensing of Railways Undertakings) Regulations 2016

7.—(1) The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016(7) are amended as follows.

(2) In regulation 3 (interpretation)—

- (a) in the definition of “applicant” for “Regulation (EC) No 1370/2007” substitute “the Public Service Obligations in Transport Regulations 2023”;
- (b) in the definition of “competent authority” for “Article 2 of Regulation (EC) No 1370/2007” substitute “regulation 2 of the Public Service Obligations in Transport Regulations 2023”;
- (c) in the definition of ““public passenger transport”, “public service contract” and “public service operator””, for “public passenger transport” substitute “public passenger transport services” and for “Article 2 of Regulation (EC) No 1370/2007” substitute “regulation 2 of the Public Service Obligations in Transport Regulations 2023”;
- (d) omit the definition of “Regulation (EC) No 1370/2007”;
- (e) in the definition of “relevant public service contract” after “transport” insert “services”;
- (f) in the definition of “relevant public service operator” after “transport” insert “services”.

(3) In regulation 9 (separation of accounts), in paragraph (2)(b) omit “in accordance with article 7 of Regulation (EC) No 1370/2007”.

CHAPTER 3

Retained EU law

Amendment of Commission Implementing Regulation (EU) 2018/1795

8.—(1) Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council(8) is amended as follows.

(2) In Article 3 (definitions)—

- (a) in the definition of “public service contract” for “point (i) of Article 2 of Regulation (EC) No 1370/2007” substitute “regulation 2 of the Public Service Obligations in Transport Regulations 2023”;
- (b) in the definition of “competent authority” for “point (b) of Article 2 of Regulation (EC) No 1370/2007” substitute “regulation 2 of the Public Service Obligations in Transport Regulations 2023”;
- (c) in the definition of “exclusive right” for “point (f) of Article 2 of Regulation (EC) No 1370/2007” substitute “regulation 2 of the Public Service Obligations in Transport Regulations 2023”.

(3) In Article 6 (public service contracts with exclusive rights), for “Article 3 of Regulation (EC) No 1370/2007” substitute “regulation 7 of the Public Service Obligations in Transport Regulations 2023”.

(7) S.I. 2016/645.

(8) EUR 2018/1795, as amended by S.I. 2019/518.

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(4) In Article 7 (information requirements for economic equilibrium test), in paragraph 2 at point (a)(2), for “Article 6(1) of Regulation (EC) No 1370/2007 and the Annex to that Regulation” substitute “regulation 5 of the Public Service Obligations in Transport Regulations 2023”.

(5) In Article 10 (contents of the economic equilibrium test and assessment criteria), in paragraph 4, for “the Annex to Regulation (EC) No 1370/2007” substitute “regulations 6(2), 7(3) and (4) and 10(1) to (3) and (5) of the Public Service Obligations in Transport Regulations 2023”.

PART 2

Revocations

Revocations

9. The following are revoked—
- (a) 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⁽⁹⁾,
 - (b) paragraph 2 of Schedule 1 (amendments to retained EU Law) to the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020⁽¹⁰⁾, and
 - (c) the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020⁽¹¹⁾.

⁽⁹⁾ EUR 1370/2007, as amended by S.I. 2020/504 and S.I. 2020/1470.

⁽¹⁰⁾ S.I. 2020/1470.

⁽¹¹⁾ S.I. 2020/504.