

2019 No. 0000

EXITING THE EUROPEAN UNION

TRANSPORT

**The Regulation (EC) No 1370/2007 (Public Service Obligations
in Transport) (Amendment) (EU Exit) Regulations 2019**

<i>Sift requirements satisfied</i>	2019
<i>Made</i> - - - -	2019
<i>Laid before Parliament</i>	2019
<i>Coming into force in accordance with regulation 1</i>	

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 23(6) of, and paragraphs 21 and 23(3) and (5) of Schedule 7 to, the EU (Withdrawal) Act 2018(a).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

Citation and commencement

1. These Regulations may be cited as the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

Saving for Article 5 of Regulation (EC) No 1370/2007

2.—(1) Despite the repeal of the European Communities Act 1972(b), Article 5 (award of public service contracts) of Regulation 1370/2007 continues to have effect in domestic law on and after exit day, and is to be treated as retained EU law.

(2) In this Regulation, “Regulation 1370/2007” means 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).

(a) 2018 c.16.

(b) 1972 c. 68, to which there are amendments not relevant to these Regulations.

(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).

Amendment of Regulation (EC) No 1370/2007

3. 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 is amended as follows.

4. 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—

“3. This Regulation shall not apply to “works concession contracts” as defined for England and Wales and Northern Ireland in regulation 3(2) of the Concession Contracts Regulations 2016(a), and for Scotland in regulation 3(2) of the Concession Contracts (Scotland) Regulations 2016(b).”.

5. 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,”.

6. 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.

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

8. 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(c) 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—

(a) S.I. 2016/273 [EU Exit amendments TBC]

(b) S.S.I. 2016/65 [EU Exit amendments TBC]

(c) S.I. 2006/246, amended by S.R. 2006/177, S.I. 2009/592, 2010/93, 2014/16, 2014/386, 2014/853 [EU Exit amendments TBC]

- (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.

9. 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:

- the relevant utilities contracts regulations for England, Wales and Northern Ireland are the Utilities Contracts Regulations 2016(a) and for Scotland are the Utilities Contracts (Scotland) Regulations 2016(b);
- the relevant public contracts regulations for England, Wales and Northern Ireland are the Public Contracts Regulations 2015(c) and for Scotland are the Public Contracts (Scotland) Regulations 2015(d); and
- a “services concession contract” is as defined:
 - for England and Wales and Northern Ireland, in regulation 2(1) of the Concession Contracts Regulations 2016;
 - for Scotland, in regulation 2(1) of the Concession Contracts (Scotland) Regulations 2016.”;
- (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”;

(a) S.I. 2016/274, amended by S.I. 2016/696. See regulation 2(1) for the definition of a “service contract”. [EU Exit amendments TBC]

(b) S.S.I. 2016/49, amended by S.I. 2016/696. See regulation 2(1) for the definition of a “service contract”. [EU Exit amendments TBC]

(c) S.I. 2015/102, amended by S.I. 2016/275 and 2016/696; there are other amending instruments but none is relevant. See regulation 2(1) for the definition of “public service contracts”. [EU Exit amendments TBC]

(d) S.S.I. 2015/446, amended by S.S.I. 2016/47; there are other amending instruments but none is relevant. See regulation 2(1) for the definition of “public service contract”. [EU Exit amendments TBC]

- (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 4(7)(a) or (b) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016”(a);
- (h) in paragraph 6 for “Unless prohibited by national law” substitute “Unless prohibited by any enactment or rule of law”.

10. In Article 5a (rail rolling stock), in paragraph 2 omit “in accordance with national law and”, and after point (d), insert the following subparagraph—

“In this paragraph, “State aid rules” means Articles 107(1) and 108(3) of the Treaty, as those Articles have effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019(b).”.

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

12. 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”.

13. 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

(a) S.I. 2016/645 [EU Exit amendments TBC]
 (b) [BEIS State aid EU Exit Regulations footnote here].

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 for England, Wales and Northern Ireland are the Utilities Contracts Regulations 2016 and for Scotland are the Utilities Contracts (Scotland) Regulations 2016;
 - the relevant public contracts regulations for England, Wales and Northern Ireland are the Public Contracts Regulations 2015 and for Scotland are the Public Contracts (Scotland) Regulations 2015; and
 - a “services concession contract” is as defined:
 - for England and Wales and Northern Ireland, in regulation 2(1) of the Concession Contracts Regulations 2016;
 - for Scotland, in regulation 2(1) of the Concession Contracts (Scotland) 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 first subparagraph omit “in accordance with Community and national law” and in the third subparagraph omit “and provided that the Commission has given its prior approval”;
- (d) in paragraph 4 omit the third subparagraph.

14. In Article 9 (compatibility with the Treaty)—

- (a) for the title substitute “State aid compatibility”;
- (b) in paragraph 1 for “shall be compatible with the common market” substitute “shall not breach the prohibition in Article 107(1) of the Treaty” and for “Article 88(3)”, substitute “Article 108(3)”;
- (c) in paragraph 2, in the first subparagraph for “Without prejudice to Articles 73, 86, 87 and 88 of the Treaty, Member States may continue to grant aid for the transport sector pursuant to Article 73 of the Treaty” substitute “Without prejudice to Articles 93, 106(2), 107(1), (2) and (3) and 108(3) of the Treaty, competent authorities may continue to grant aid for the transport sector pursuant to Article 93 of the Treaty”;
- (d) in paragraph 2, in the first subparagraph, in point (a) omit “until the entry into force of common rules on the allocation of infrastructure costs,”;
- (e) in paragraph 2, in the first subparagraph, in point (b) for “which are more economic for the Community in general” substitute “which are of general economic interest”;
- (f) in paragraph 2, after the second subparagraph insert—

“In this Article, a reference to Article 93, 106(2), 107(2) or (3) of the Treaty is to be read in accordance with regulation 3(3)(b) of the State Aid (EU Exit) Regulations 2019. In this Article, a reference to Article 107(1) or 108(3) of the Treaty is a reference to that Article as it has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019.”.

15. Omit Article 11 (reports).

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

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

Transitional provision

18. 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.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of 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 section 8(2)(b), (d) and (g)) 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”).

Regulation 2, which is made in exercise of the powers conferred by section 23 of and paragraph 23 of Schedule 7 to the Act, provides for the saving of Article 5 of Regulation 1370/2007 from repeal along with repeal of the European Communities Act 1972, and for that Article to be treated as retained EU law along with the rest of the Regulation.

Regulations 3 to 17 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 18 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.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.