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Anthony Browne MP  
Parliamentary Under Secretary of State for  
Decarbonisation and Technology  
Department for Transport

By email: [DfT.Ministers@dft.gov.uk](mailto:DfT.Ministers@dft.gov.uk)

27 November 2023

Dear Mr Browne,

I would like to congratulate you on your recent appointment as Parliamentary Under Secretary of State for Decarbonisation and Technology and note your portfolio covers many areas of mutual interest, particularly transport decarbonisation and technology.

Of particular note, is our governments continued work, alongside the Welsh Government and Northern Ireland's Department for Infrastructure, to deliver the Vehicle Emissions Trading Schemes ('the ZEV mandate'), which will play a significant role in progressing the UK's switch to EVs over the coming decade. As the Climate Change Committee has stated, that switch will be the 'largest single driver of future emissions reductions' and the ZEV mandate will play a critical role in delivering those reductions.

I have valued my engagement with the UK Government Transport Ministers in the past and look forward to continuing to build on these relationships.

You will no doubt have many demands on your time in assuming your new role. However, I would welcome an introductory meeting with you, at the earliest opportunity.

You may be aware that the next meeting of the Transport 4 nations Inter-Ministerial Group will be chaired by your colleague, Lord Davies of Gower, and is being planned to take place in person, in London, in the new year. I would welcome the opportunity to use this visit to also meet with you on a bilateral basis.

If acceptable I will get my private office to contact yours to make arrangements.

Once again, I offer my congratulations and very best wishes for your new role.

Yours sincerely,



**FIONA HYSLOP**

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Rt Hon Suella Braverman KC MP  
By email: [ps.homesecretary@homeoffice.gov.uk](mailto:ps.homesecretary@homeoffice.gov.uk)

19 October 2023

Dear Suella,

I am writing to urge you to take immediate action to add bus drivers to the Shortage Occupation List. As you will be aware, the bus sector across the UK is facing a number of challenges to the reliability and availability of the critical services they provide to communities. At the same time, bus remains one of the most affordable forms of public transport – crucial for those on lower incomes which is particularly important during the current cost of living crisis. It is therefore imperative that Government, at all levels, works to ensure services are best protected within the powers available to them.

Bus driver shortages are currently limiting operators' ability to maintain and improve service levels that would help bus networks to recover from and grow out of the pandemic. It is unacceptable that, in some instances, operators are reducing service levels, not because of a lack of passenger demand but because of a shortage of drivers. This is impeding the opportunity to achieve modal shift and reduce carbon emissions.

In Scotland, a Bus Taskforce was established in October 2022 in partnership with industry and local authority stakeholders to work together to find solutions to improve the sustainability of the sector in the long term. The group looked at ways to alleviate driver shortages through exploring recruitment opportunities, raising the profile of bus driving as a career through qualifications, and engaging with DfT and DVLA to explore licence and process improvements. In addition, bus operators are working to attract and retain bus drivers in a highly competitive service sector, through increasing wages and improving working conditions, however the situation remains acute.

We must recognise the skilled role that bus drivers perform and with significant public safety responsibilities. A strong case can be made that bus driving is as skilled as other occupations that are already eligible for Skilled Worker Visas. As such, I believe the UK Government must add bus drivers to the list of occupations eligible for the Skilled Worker Visa, providing the sector with a larger pool of potential recruits which will undoubtedly help bus driver recruitment efforts across all parts of the UK.

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In addition, those displaced from Ukraine who carry PCV or HGV licences are currently unable to exchange their Ukrainian licence for a UK equivalent. The Ukrainian Exchange Agreement must be progressed to help alleviate driver shortages, and allow Ukrainians to find work in Scotland and other parts of the UK.

Having accounted for the full scope of the issues under your purview, I am urging you and the UK Government to take the immediate action on adding bus drivers to the Shortage Occupation List, and progressing the Ukrainian Exchange Agreement for HGV and PCV licences.

Yours sincerely



**FIONA HYSLOP**

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Richard Holden MP  
Parliamentary Under Secretary of State  
Department for Transport  
By email: [richard.holden@dft.gov.uk](mailto:richard.holden@dft.gov.uk)

20 June 2023

Dear Richard,

Thank you for your letter dated 30 May 2023 to Mr Stewart, former Minister for Transport providing some updates from your meeting with him on 24 April 2023.

I am pleased to hear that good progress is being made by DVLA to allow Ukrainian lorry and bus license holders to exchange their current Ukrainian licences to a UK licence, should they wish to do so.

I would also like to thank you for informing me that DfT and the CAA are examining HIAL's proposals for enhancing perimeter protection for the airports at Kirkwall, Stomoway and Sumburgh. As Mr Stewart made you aware, at the meeting, it is important that a decision is made as quickly as possible to limit any potential impact on our lifeline services and so I would urge you to treat this as a matter of urgency. I would appreciate being updated on progress following your planned discussions on this matter during the summer.

I look forward to engaging with you on transport matters in the near future and I am keen that we continue with the constructive relationship established by my predecessor. In that spirit, I would welcome an introductory meeting at the earliest opportunity to discuss areas of mutual interest.

I would be grateful if your office could contact my office at [MinisterFT@gov.scot](mailto:MinisterFT@gov.scot) to agree a mutually convenient date and to propose some items for discussion.

Yours sincerely

**FIONA HYSLOP**

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Mark Harper  
Secretary of State for Transport  
Department for Transport  
By email: [DfT.Ministers@df.gov.uk](mailto:DfT.Ministers@df.gov.uk)

20<sup>th</sup> November 2023

Dear Mark,

**THE HEAVY GOODS VEHICLES (CHARGING FOR THE USE OF CERTAIN  
INFRASTRUCTURE ON THE TRANS-EUROPEAN ROAD NETWORK) (REVOCATION  
AND CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023**

**EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

Further to my holding reply of 18 October 2023 to Richard Holden MP in response to his letter of 18 July 2023, I can confirm that the Scottish Parliament has given its approval to Scottish devolved matters being included in The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023.

I will be grateful if our officials can continue to liaise on the detailed drafting of the SI and we look forward to seeing the final version of the SI before it is laid around mid-December 2023.

Yours sincerely,



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Rt Hon Mark Harper MP  
Secretary of State for Transport  
Department for Transport  
By email: [DfT.Ministers@df.gov.uk](mailto:DfT.Ministers@df.gov.uk)

17 November 2023

Dear Mark

### **Automated Vehicles Bill**

I am responding to a letter sent to me by the then Minister for State for Transport, the Rt Hon Jesse Norman MP, dated 6 November 2023, on the Automated Vehicles Bill, enclosing a copy of the Bill, devolution analysis and Explanatory Notes. I understand that an updated version of the Bill text and Explanatory Notes were shared with my officials at Transport Scotland on 8 November 2023 and the Bill was introduced into the House of Lords on the same day.

I am pleased that my officials have been engaged on the proposals and policy intent, which has been helpful, but it is very disappointing that the Bill text, Explanatory Notes and devolution analysis were sent so late before introduction. As this Bill is large and complex, my officials will require time to analyse the clauses which the UK Government considers engage the legislative consent process, along with the remainder of the Bill text. I will not therefore be in a position to provide you with a response by 20 November 2023.

I have also written to the Presiding Officer of the Scottish Parliament to explain that, given the late receipt of the Bill from the UK Government, and the need to analyse it properly, the Scottish Government will not be able to lodge a legislative consent memorandum within the 14 days from introduction set out in Standing Orders of the Parliament, It is also regrettable that we have had to take this step, particularly given previous engagement on the Bill.

I will write to you once I have considered advice from officials.

Yours sincerely



**FIONA HYSLOP**

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## Department for Transport

Fiona Hyslop MSP  
Minister for Transport  
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From the Minister of State  
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Our Ref: MC/436589

20 September 2023

Dear Fiona,

Thanks for your letter of 5 September regarding proposed changes to railway station ticket offices.

As you are aware, train operators launched consultations on their proposed ticket office changes under the Ticketing and Settlement Agreement on 5 July. Following continued engagement with stakeholders and accessibility groups, operators extended the consultation period by five weeks, to the 1 September. This extended consultation period provided all users of the railway with more time to respond.

We are now in a period where the independent passenger bodies (Transport Focus and London TravelWatch) are engaging with train operators on the basis of the consultation responses they have received and the criteria they have set out. We expect train operators to work collaboratively with the passenger bodies in the coming weeks, to listen to the concerns raised and to refine their proposals accordingly.

You are right to state that ticket purchasing preferences are changing. In 2022/23, around one in ten transactions occurred at a ticket office, this is down from one in three a decade earlier and equates to 13 per cent of total revenue. Together with industry, we want to respond to changing rail user need, improving and modernise the passenger experience by moving staff out from ticket offices to provide more help and advice in customer focused roles.

I understand that individuals with reduced mobility may be reliant on public transport and the railway in particular.

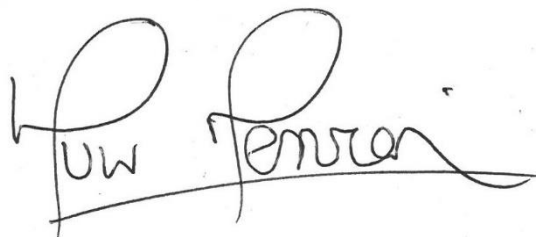
When proposing major changes to ticket office opening hours – including closures – train operators are required to take into account the adequacy of the proposed alternatives in relation to the needs of passengers who are disabled, and to include this in the notice of the proposal sent to other operators and passenger groups. When consulting, operators should have also clearly considered other equality-related needs. Operators prepared Equality Impact Assessments, and these were available on their websites during the consultation.

No currently staffed station should be unstaffed as a result of industry changes, and operators should ensure that staff are well located to meet passenger needs in future. This includes ensuring that staff are available to assist those who need additional support or do not wish to use digital tickets. The independent passenger bodies will play a vital role in assessing and shaping staffing proposals.

I note the concerns you have raised regarding disabled passengers purchasing tickets. We recognise that ticket vending machine (TVM) capability and accessibility varies across the network. The rail industry is looking to expand digital ticketing options and to upgrade TVMs to make them easier for passengers to use. Train operators will be responsible for ensuring that station staff are able to assist passengers to use TVMs and to purchase tickets on their own devices. If a passenger is unable to purchase their required ticket at their local station, they will not be expected to travel out of their way and will be able to buy en-route or at their destination.

Thank you again for writing to me on this issue. I hope you find this response helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Huw Merriman'. The signature is written in a cursive style with a long horizontal stroke at the end.

**HUW MERRIMAN MP**

**MINISTER OF STATE FOR TRANSPORT**

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The Rt Hon Mark Harper MP  
Secretary of State for Transport  
Department for Transport  
By email: [Dft.Ministers@dft.gov.uk](mailto:Dft.Ministers@dft.gov.uk)

20 November 2023

Dear Mark

### **Call for Evidence – Driver Licensing for People with Medical Conditions**

I am writing in response to the letter of 28 September 2023 from Mr Holden, former Minister for Transport, referring to his request for a response to the Call for Evidence – Driver Licensing for People with Medical Conditions.

As Driver Licensing is fully reserved to UKG, I welcome the opportunity to provide comment given the Call for Evidence impacts on the people and industries across Scotland.

The Call for Evidence highlights the growing prevalence of drivers with multiple medical conditions. I acknowledge the positive change of law implemented in July 2022 to widen the pool of registered healthcare professionals to include specialist nurses, who can provide information to DVLA. However, I consider that it would be beneficial to provide clearer guidance to all interested parties on the role of the NHS providers, and in what circumstances each profession is considered most appropriate to undertake a medical assessment, including where a driving assessment is required.

The current Assessing Fitness to Drive Guidance should also be updated to recognise the circumstances considered by “multiple conditions” and set out clearly how these should be addressed by medical professionals, noting the need for a driving assessment if required.

In Scotland, driving assessments are provided by NHS Scotland, and NHS Scotland is about to commence a review of the Scottish Assessment Driving Assessment Centre, and it would therefore be very helpful if any proposed changes to driving assessments could be shared with the Scottish Government at an early stage, to ensure that these can be taken into account as part of the review.

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I would also wish to address the potential impact on the HGV and bus industry with any proposed changes. Historically, there has been an issue with the recruitment and retention of HGV and bus drivers across the UK. These industries have an ageing workforce with the majority of HGV drivers being 49 or older. It is generally recognised that as people grow older they often develop medical issues. Within the HGV and bus driving group in particular, they are susceptible to several common medical conditions due to the nature and culture of the job. I would therefore welcome the introduction of measures to streamline the medical assessment process, particularly for complex cases as this would support recruitment and retention. However, any additional medical requirements being proposed will need to be evidence based to demonstrate why they are needed and the positive impact that they would have on the workforce as this could exacerbate the current issues with driver shortages in both sectors.

I note with the exception of Group 2 (buses and lorries) driving licence applications, DVLA is currently responsible for paying all fees related to medical tests, reports and examinations. It would appear from the Call for Evidence, that one of the legislative changes being considered is to place the responsibility on the applicant to pay for medical investigations in relation to their fitness to drive.

Given the financial pressures already facing many people and the increased cost of living, I believe it would be inappropriate to consider changing the legislation by making individuals responsible for paying for medical related fees. It is well recognised that having access to transport can bring substantial social and economic benefits such as providing additional freedom as well as opening more job opportunities, access to health and education. Scotland has a high proportion of rural and remote areas with an aging population. These areas often have limited alternative transport options, and the addition of medical related fees for licences may unduly impact low income households in rural and remote locations. Therefore, I would be strongly opposed to legislative changes that place further financial constraints on individuals to obtain their driving licence.

With freight being the main agenda item for the next Transport IMG, perhaps you will be in a position to keep me informed of the outcome of this Call for Evidence as it will be of particular interest should these discussions cover barriers to HGV drivers and the industry.

Yours sincerely



**FIONA HYSLOP**



Department  
for Transport

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Web site: [www.gov.uk/dft](http://www.gov.uk/dft)

19 September 2023

Dear Fiona,

### **National Rail Contract for West Coast Partnership**

I write to inform you that today I have awarded a National Rail Contract to First Trenitalia to continue operating the West Coast Partnership providing West Coast train services as Avanti West Coast, following significant improvements across reliability, punctuality and customer satisfaction. This contract, starting on 15 October 2023, will have a core term of three years and a maximum possible term of nine years. After three years, the contract can be terminated at any point with three months' notice at my discretion.

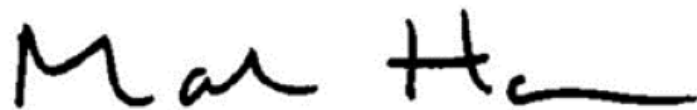
The decision to award a contract to First Trenitalia was contingent on the operator continuing to win back the confidence of passengers. Over recent months the Rail Minister, officials and I have met regularly with First Group and Avanti senior management to understand the challenges and hold them to account for issues within their control.

Avanti's performance has improved significantly and in the Office of Rail and Road's latest statistical release, in terms of reliability, Avanti is the most improved operator where performance is compared to the previous year. Avanti-caused cancellations have been consistently below 3% since March 2023, and as low as 1.1% in July 2023, down from 13% in January 2023. Over 90% of trains now arrive within 15 minutes of their scheduled time, improved from 75% in December 2022. Over 100 additional drivers have been trained and brought on since April 2022, and improvements to passenger facilities on trains include better seats, lighting, and charging points.

The transformation of Avanti's performance over the past year demonstrates how, through working closely with Government, setting out clear set goals and being incentivised to succeed, the private sector can deliver on our railways.

However, I am clear there is still further to go, and Avanti must continue its work to restore service levels. Together we are working to develop a resilient timetable that is appropriate to passenger demand and delivers good value for the taxpayer. I will be grateful for your support in helping me and the industry deliver it.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Harper". The signature is written in a cursive, slightly informal style.

**The Rt Hon Mark Harper MP**

**SECRETARY OF STATE FOR TRANSPORT**

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E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Richard Holden MP  
Parliamentary Under Secretary of State  
Department for Transport  
By email: [Richard.Holden@dft.gov.uk](mailto:Richard.Holden@dft.gov.uk)

17 July 2023

Dear Richard,

Firstly, I would like to thank you for the collaborative engagement between our Governments since March 2022 regarding the commitment from the UK Government to work with the Scottish Government on developing options to improve the A75 trunk road.

I understand my predecessor Jenny Gilruth MSP wrote to you on 15 February 2023 regarding your offer of development funding to support this work, subject to a business case. I also understand the previous Minister for Transport (Kevin Stewart MSP) met with you on the 24 April 2023, whereby you had a collaborative discussion on the matter. Additionally, during this meeting, I believe it was confirmed that the Scottish Government would be submitting the business case imminently, which was then issued to your officials on the 28 April. Since then, my officials have submitted a number of iterations of this business case, working closely and productively with your officials in the process.

My officials now understand that there is only funding available until the end of financial year 2024/25, despite being asked to prepare a business case setting out the evidence for all A75 interventions identified within our second Strategic Transport Projects Review (STPR2) for which there is a case for investment. As you will be aware, the design and development of infrastructure projects of the scale involved take far longer than 18 months. Thus, I am sure you will share my disappointment in knowing that my officials have now been asked to reduce the scope of the business case which, in turn, will halt our ability to show real progress towards significant improvements to the A75.

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I would also note that despite the parallel announcements made by the Department for Transport (DfT) in March 2021, with the publication of the Interim UCR Report and the creation of a Union Connectivity Development Fund, there was a distinct lack of information as to how these funds may be accessed. It wasn't until one year later, in March 2022, that Transport Scotland officials had a discussion with DfT counterparts on this matter. It was then another seven months before it was confirmed that the Scottish Government must submit a business case to the Secretary of State for Transport, then to HM Treasury, for approval – as confirmed in your letter to Jenny Gilruth MSP on the 18 January 2023. This is almost two years that the Scottish Government could have been better utilising in delivering for the people of Scotland and beyond (given the importance of the A75 to the wider UK and Europe).

For the reasons set out above, I believe that the most recent request from the DfT, to reduce the scope of our proposal, is entirely unacceptable. An ask that essentially seeks for the Scottish Government to reduce its ambition for the people of the South West of Scotland. Before I ask my officials to formally respond to the DfT, I would be most grateful if you can clarify that this really is the best the UK Government can offer, especially given the importance that the Union Connectivity Review placed on the A75. I would be more than happy to meet with you to discuss this matter and I really do hope that we can come to a meaningful resolution. One that delivers for the people of Scotland and the wider UK.

Yours sincerely



**FIONA HYSLOP**

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Kyle Thornton

By email: [kyleakthornton@gmail.com](mailto:kyleakthornton@gmail.com)

Our ref:  
202300387211

Date:  
22 December 2023

Dear Kyle,

Thank you for your request dated 28 November 2023 under the Freedom of Information (Scotland) Act 2002 (FOISA).

#### Your request

You asked for copies of all correspondence between Fiona Hyslop MSP (Transport Minister) since her appointment and the UK Government and its agencies.

#### Response to your request

I enclose a copy of all the information you requested. Exemptions under Section 38(1)(b) (Personal Information) of FOISA apply to some of the information requested. The reasons why this exemption applies is explained in the Annex of this letter.

#### Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to

Alison Irvine  
Interim Chief Executive  
[ceo@transport.gov.scot](mailto:ceo@transport.gov.scot)  
Transport Scotland  
George House  
2nd Floor  
36 North Hanover Street  
Glasgow  
G1 2AD

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review in accordance with FOISA as soon as possible, and not later than 20 working days from the day following the date we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:  
<https://www.itspublicknowledge.info/appeal>.

Your sincerely,

Nadia Smith

## Annex A

### **Section 38(1)(b) – personal data of a third party**

An exemption under section 38(1)(b) of FOISA (Personal Information) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the ‘public interest test’, so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

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Guy Opperman MP  
Parliamentary Under Secretary of State for Roads  
and Local Transport  
Department for Transport

By email: DfT.Ministers@dft.gov.uk

27 November 2023

Dear Mr Opperman,

I would like to congratulate you on your recent appointment as Parliamentary Under Secretary of State for Roads and Local Transport and note your portfolio covers many areas of mutual interest, including bus, freight and women's safety.

I have valued my engagement with the UK Government Transport Ministers in the past and look forward to continuing to build on these relationships.

You will no doubt have many demands on your time in assuming your new role. However, I would welcome an introductory meeting with you, at the earliest opportunity.

You may be aware that the next meeting of the Transport 4 nations Inter-Ministerial Group will be chaired by your colleague, Lord Davies of Gower, and is being planned to take place in person, in London, in the new year. I would welcome the opportunity to use this visit to also meet with you on a bilateral basis.

If acceptable I will get my private office to contact yours to make arrangements.

Once again, I offer my congratulations and very best wishes for your new role.

Yours sincerely,



**FIONA HYSLOP**



Department  
for Transport

From the Minister of State  
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Fiona Hyslop MSP  
Minister for Transport  
Scottish Government  
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EH1 3DG

10 July 2023

Dear Fiona,

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

The UK Government intends to bring forward the above Regulations under section 14 of the Retained EU Law (Revocation and Reform) Bill 2023 (as currently drafted), that will make provision relating to Regulation (EU) 1370/2007 (“R1370”)<sup>1</sup>. I am writing to seek your agreement to the provisions in the draft statutory instrument (SI) at **Annex A** which revokes and replaces R1370.

In summary, R1370 sets out the conditions under which “competent authorities” may award Public Service Obligation (PSO) contracts for rail passenger services to train operating companies (TOCs), as well as PSO contracts for bus and tram concession services outside the general procurement and subsidy rules. R1370 contains some important exemptions from the wider domestic rules surrounding subsidies and procurement, currently set out in the Subsidy Control Act 2022 and the EU-derived procurement regulations (to be replaced by the Procurement Bill). It recognises the special status of public passenger services as critical national networks and provides competent authorities with more flexibility to contract passenger services contracts more efficiently via simpler competitive processes and, when necessary, via direct award.

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<sup>1</sup> [www.legislation.gov.uk/eur/2007/1370](http://www.legislation.gov.uk/eur/2007/1370)

This instrument will reinstate the powers to make direct awards of rail PSO contracts that are otherwise due to expire on 25 December 2023 due to a sunset provision in R1370 itself. This will enable the Department for Transport and other competent authorities, including the Scottish Government, to continue to be able to make direct awards in the same way that they can now, providing certainty, clarity, and confidence to rail operators and passengers. Furthermore, this instrument allows more certainty on how these regulations should be interpreted for Great Britain specifically by defining terms that were previously left undefined in the EU version of R1370.

The instrument will be subject to the affirmative procedure and so will be fully scrutinised and debated by the UK Parliament. However, whilst legislative competence in respect of rail PSO contracts is reserved to Westminster, the award of bus service concessions, light rail and tramways contracts is a devolved matter. Therefore, I am writing to seek your agreement to the devolved provisions in the above statutory instrument, in particular the cross-modal regulations set out in the draft SI (as of 31 May 2023) at **Annex A**. **Annex B** contains a draft explanatory table that gives further detail of the proposed changes, including those where your agreement to legislate is being sought, on areas related to bus, tram and light rail, as that is where competence is devolved.

Crucially, this instrument also makes amendments to ensure consistency with the wider domestic procurement and subsidy regimes and to ensure compliance with the UK-EU Trade and Cooperation Agreement (TCA). Under the TCA, the UK is committed to establishing an effective system to control subsidies which may affect trade and investment between the EU and the UK. This SI will (in part) ensure compliance with our international obligations in the TCA. **Annex B** sets out further detail on which regulations relate to compliance with the UK-EU TCA specifically. Should you not be in a position to provide agreement, we would still have to ensure an approach to the SI which is consistent with the UK's international obligations.

The approach for agreement is in line with the letter sent to Angus Robertson MSP from the Secretary of State for the Department for Business and Trade and the Secretary of State for the Department for Levelling Up, Housing and Communities.

My officials have closely engaged with yours, as well as with industry on the proposal. Much of these changes, as they relate to rail, were also considered in a formal public consultation (the Plan for Rail consultation) in June 2022.<sup>2</sup> I would like to thank your officials for their constructive engagement on these issues to date.

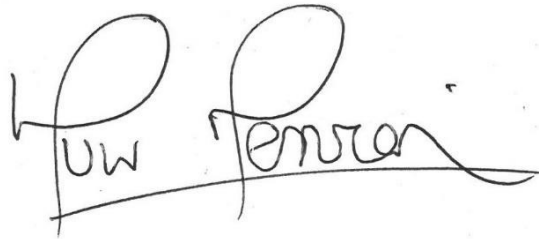
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<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1082162/williams-shapps-plan-for-rail-consultation-on-legislation-to-implement-rail-transformation-print-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082162/williams-shapps-plan-for-rail-consultation-on-legislation-to-implement-rail-transformation-print-version.pdf)

Subject to your views, we intend to lay this SI in October 2023. In order to do this, we would be grateful for a response by no later than 7 August 2023. This timing is a reflection of the need to lay the instrument in October for parliamentary scrutiny, given the expiry of the powers I mention above on 25 December 2023.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Huw Merriman'. The signature is written in a cursive style with a horizontal line underneath the name.

**HUW MERRIMAN MP**

**MINISTER OF STATE FOR TRANSPORT**

# Annex A: Draft Statutory Instrument of The Public Service Obligations in Transport Regulations 2023

*Draft Regulations laid before Parliament under [paragraph 5(1)] of Schedule [5] to the Retained EU Law (Revocation and Reform) Act 2023, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2023 No. XXX**

### RETAINED EU LAW REFORM

#### PUBLIC PASSENGER TRANSPORT

### The Public Service Obligations in Transport Regulations 2023

*Made* - - - - [date] 2023

*Coming into force* - - [date] 2023

The Secretary of State makes these Regulations in exercise of the powers conferred by sections [14(2)] and [(3)] and [19] of the Retained EU Law (Revocation and Reform) Act 2023 (“the 2023 Act”)(a).

The Secretary of State is a relevant national authority for the purposes of section [14(2)] and [(3)] of the 2023 Act and a Minister of the Crown for the purposes of section [19] of the 2023 Act(b).

#### PART 1

##### Introductory provisions

##### **Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Public Service Obligations in Transport Regulations 2023 and come into force on 25th December 2023.

(2) These Regulations extend to England and Wales and Scotland.

##### **Application**

**2.**—(1) Subject to paragraph (2), these Regulations apply to the national and international operation of public passenger transport services by rail and other track-based modes, and by road, in England and Wales and Scotland.

(2) These Regulations do not apply to—

- (a) heritage passenger transport services; or
- (b) works concession contracts.

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(a) [insert full citation once REUL Bill is passed]

(b) See section 21(1) of the Retained EU Law (Revocation and Reform) Act 2023 for the definitions of “relevant national authority” and “Minister of the Crown”.

(3) For the purposes of this regulation-

"heritage passenger transport services" means transport services which are operated primarily for their historical interest or for the purposes of tourism;

"works concession contracts" has the same meaning as in-

- (a) regulation 3(2) of the Concession Contracts Regulations 2016(a), in England and Wales,
- (b) regulation 3(2) of the Concession Contracts (Scotland) Regulations 2016(b), in Scotland.

### Interpretation

3.- (1) In these Regulations-

"bus" means a motor vehicle (other than a tram) which is adapted to carry more than sixteen passengers;

"competent authority" means any public authority or group of public authorities which has a duty to secure the provision of public passenger transport in a given geographical area;

"competent local authority" means any competent authority whose geographical area of competence is not national, and includes a 'local transport authority' as defined in section 10(4) of the Transport Act 2000 (for England and Wales)(c), a London transport authority as defined in section 162(1) of that Act, Transport for London(d), and a "local transport authority" as defined in section 82 of the Transport (Scotland) Act 2001 (for Scotland)(e);

"direct award" means the award of a public service contract to a given public service operator without any prior competitive tendering procedure;

"exclusive right" means a right entitling a public service operator to operate certain public passenger transport services on a particular route or network or in a particular area, to the exclusion of any other such operator;

"general rule" means a measure which applies without discrimination to all public passenger transport services of the same type in a given geographical area for which a competent authority is responsible;

"integrated public passenger transport services" means interconnected transport services within a given geographical area with a single information service, ticketing scheme and timetable;

"interested party" means-

- (a) a person whose interests may be affected by the competent authority's decision to enter into the public service contract or make the general rule, or
- (b) the Secretary of State;

"internal operator" means a legally distinct entity over which a competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments;

"public authority" means a person that is-

- (a) wholly or mainly funded out of public funds, or
- (b) subject to public authority oversight,

and does not operate on a commercial basis;

"public passenger transport" means passenger transport services of general economic interest provided to the public on a non-discriminatory and continuous basis;

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

b) S.S. J. 2016/65, to which there are amendments not relevant to these Regulations. (c) 2000 c.38.

(d) Transport for London is a body corporate established by section 154 of the Greater London Authority Act 1999 (c. 29).

(e) 2001 asp. 2.

"public service compensation" means any benefit, particularly financial, granted directly or indirectly by a competent authority from public funds during the period of implementation of a public service obligation or in connection with that period;

"public service contract"-

- (a) means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations, and
- (b) may also consist of a decision adopted by the competent authority containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;

"public service obligation" means a requirement defined or determined by a competent authority in accordance with regulation 6, in order to secure the provision of public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward;

"public service operator" means any public or private supplier or group of such suppliers which operates public passenger transport services or any public body which provides public passenger transport services;

"procurement" means the award, entry into and management of a contract; "

rail" means a system of transport employing parallel rails which-

- (a) provide support and guidance for vehicles on flanged wheels, and
- (b) form a track which is either of a gauge of at least 350 millimeters or crosses a carriageway (whether or not on the same level),

but does not include a tramway or any other form of track-based mode;

"small and medium-sized enterprises" means suppliers that-

- (a) have fewer than 250 staff, and
- (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million.

"track-based mode" means a mode of transport in which the vehicle derives support or guidance from a track or other structure not being a road(a);

"tram" means a vehicle which operates on a tramway;

"tramway" has the same meaning as in section 67(1) of the Transport and Works Act 1992(b);

"value" means the value of a service, a route, a public service contract, or a compensation scheme for public passenger transport corresponding to the total remuneration, before VAT, of the public service operator, including compensation of whatever kind paid by the competent authority and revenue from the sale of tickets which is not repaid to that competent authority.

(2) For the purpose of the definition of "public authority" in paragraph (1)---

- (a) examples of factors to be taken into account in determining whether a person operates on a commercial basis are-
  - (i) whether the person operates on the basis that its losses would be borne, or its continued operation secured, by a public authority (whether directly or indirectly);
  - (ii) whether the person contracts on terms more favourable than those that might reasonably have been available to it had it not been associated with a public authority;

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(a) See section 142(1) of the Road Traffic Regulation Act 1984 (c. 27) for the definition of "road".  
(b) 1992 c. 42.

- (iii) whether the person operates on a market that is subject to fair and effective competition;
- (b) a person is subject to public authority oversight if the person is subject to the management or control of-
  - (i) one or more public authorities, or
  - (ii) a board more than half of the members of which are appointed by one or more public authorities.

### **Objectives**

4.- (1) When applying these Regulations, a competent authority must have regard to the importance of-

- (a) delivering value for money,
- (b) maximising public benefit,
- (c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions, and
- (ct) acting, and being seen to act, with integrity.

(2) When applying these Regulations, a competent authority must treat suppliers the same unless a difference between the suppliers justifies different treatment.

(3) If a competent authority considers that different treatment is justified in a particular case, the authority must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.

(4) In carrying out a procurement under these Regulations, a contracting authority must-

- (a) have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and
- (b) consider whether such barriers can be removed or reduced.

## **PART2**

### Content of public servicecontracts

#### **Interpretation of Part 2**

5. For the purposes of this Part-

- (a) to calculate the net financial effect ("NFE"), the competent authority must be guided by the following scheme-
  - (i) NFE equals-
    - (aa) costs incurred in relation to a public service obligation or a bundle of public service obligations imposed by the competent authority (whether contained in a public service contract, a general rule, or both), minus
    - (bb) any positive financial effects generated within the network operated under the public service obligation or obligations in question, minus
    - (cc) any receipts from tariff or any other revenue generated while fulfilling the public service obligation or obligations in question, plus a reasonable profit; and
  - (ii) where, in the competent authority's opinion, compliance with the public service obligation has a quantifiable financial effect on a public service operator's other transport activities, such an effect must, in order to avoid overcompensation or lack of compensation, be taken into account when calculating the net financial effect;

- (b) "reasonable profit" means, taking account of the amount of any capital or other resources (or both) invested by the public service operator and the risk, or absence of risk incurred by the public service operator by virtue of public authority intervention, having regard to the size and nature of the services, including by transfer of financial risk around any capital investment, revenue or operating expenditure-
  - (i) a level of profit that is within a normal range for the sector; or
  - (ii) where a level of profit that is within a normal range for the sector cannot be determined, the level of profit that would be required by a typical, well-run undertaking adequately equipped with the means to provide the service, and active in the same sector considering whether or not to provide the service in question.

#### **Public service obligations**

6.- (1) A competent authority must set out the specifications for public service obligations in the provision of public passenger transport services and the scope of their application taking into account-

- (a) the possibility of grouping cost-covering services with non-cost-covering services, and
- (b) the appropriateness of the specifications to the services concerned.

(2) The specifications set down in accordance with paragraph (1) must be consistent with the objectives of relevant public transport policies, and both the specifications and the related compensation of the net financial effect of the public service obligations must-

- (a) achieve the objectives of the relevant public transport policies in a cost-effective manner, and
- (b) financially sustain the provision of public passenger transport, in accordance with the requirements laid down in the relevant public transport policies in the long term.

(3) Subject to agreement of the competent authorities in whose geographical area the services are provided, public service obligations may concern cross-border public transport services, including those covering local and regional transport needs.

#### **Public service contracts and general rules**

7.- (1) A competent authority must, subject to paragraph (2), grant an exclusive right or compensation in return for the discharge of public service obligations via a public service contract.

(2) A public service obligation which aims to establish maximum tariffs for-

- (a) all passengers, or
- (b) certain categories of passenger,

may be effected by a general rule.

(3) In accordance with the principles set out in this regulation and in regulation 10 (public service compensation for directly awarded contracts), the competent authority must compensate the public service operator for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with tariff obligations effected by a general rule in a way that prevents overcompensation.

(4) A public service contract and a general rule must-

- (a) clearly set out the public service obligations with which the public service operator is to comply, and the geographical areas concerned,
- (b) establish in advance, in an objective and transparent manner-
  - (i) the parameters on the basis of which the compensation payment, if any, is to be calculated,
  - (ii) the nature and extent of any exclusive rights granted, in a way that prevents overcompensation, and

- (iii) in the case of a public service contract awarded other than under regulation 14 (awards of contracts under competitive procedure), determine the parameters in subparagraphs (i) and (ii) in accordance with regulation 10, so that no compensation payment exceeds the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of related revenue kept by the public service operator and a reasonable profit, and
  - (c) determine the arrangements for the allocation of costs connected with the provision of services.
- (5) The costs referred to in paragraph (4)(c) may in particular include-
- (a) costs of staff,
  - (b) costs of energy,
  - (c) infrastructure charges,
  - (d) costs of maintenance and repair of public transport vehicles,
  - (e) costs of rolling stock and installations necessary for operating the passenger transport services,
  - (f) fixed costs, and
  - (g) costs of relevant finance.
- (6) A public service contract and a general rule must determine the arrangements for the allocation of revenue from the sale of tickets, which may be-
- (a) kept by the public service operator,
  - (b) repaid to the competent authority, or
  - (c) shared between the public service operator and the competent authority.
- (7) A public service contract must require the public service operator to provide the competent authority with the information essential for the award of the public service contract, while ensuring the legitimate protection of commercially sensitive information and commercial interests.

### **Subcontracting**

- 8.- (1)** A contracting authority's tender documents and public service contracts must clearly indicate-
- (a) whether subcontracting is permitted; and
  - (b) the extent, if any, to which the public service operator is permitted to subcontract.
- (2) Where a public service contract entrusts an operator with the administration and performance of public passenger transport services in accordance with these Regulations, the contract must require the public service operator to perform a major part of the public passenger transport services itself.
- (3) Where a public service contract covers the design, construction and operation of public passenger transport services, that contract-
- (a) may permit the operator to subcontract the whole of the operation of those services; and
  - (b) must set out the conditions applicable to subcontracting.

### **Duration of public service contracts**

- 9.- (1)** Unless paragraphs (2) or (3) of this regulation apply, the duration of a public service contract must not exceed-
- (a) 10 years if the contract is awarded under regulation 17 (direct awards: rail), regulation 19 (direct award: rail due to structural and geographical characteristics) or regulation 20 (direct award: rail where operator manages the railway infrastructure);

- (b) 2 years if the contract is awarded, extended or imposed under regulation 16 (emergency measures);
- (c) 5 years, if the contract is awarded under regulation 18 (temporary direct award: rail);
- (d) for any other contract-
  - (i) if transport by either rail or other track-based modes (or any combination of rail and other track-based modes) represents more than 50% of the value of the passenger transport services, 15 years;
  - (ii) otherwise, 10 years.

(2) A public service contract may, subject to paragraph (4), have a duration up to 50% longer than the applicable period prescribed under paragraph (1) if the public service operator provides assets for which the depreciation period is exceptional and which are significant in relation to the overall assets needed to carry out the passenger transport services covered by the public service contract and are linked predominantly to the passenger transport services covered by the contract.

(3) A public service contract may have a longer duration than is prescribed under paragraphs (1) and (2) if-

- (a) in the opinion of the competent authority a longer duration is justified by the amortisation of capital in relation to exceptional levels of investment in infrastructure, rolling stock or vehicles, and
- (b) the public service contract is awarded in a fair competitive tendering procedure.

(4) Paragraphs (2) and (3) of this regulation do not apply to a contract made under regulation 16 (emergency measures) or regulation 18 (temporary direct awards).

#### **Public service compensation for directly awarded contracts**

10.- (1) With the exception of a public service contract awarded under regulation 14 (award of contracts under competitive procedure), every public service contract awarded and general rule effected under these Regulations must, in order to demonstrate that overcompensation has been avoided, comply with this regulation.

(2) The compensation paid must not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service operator.

(3) The effects referred to in paragraph (2) must be assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met.

(4) In order to increase transparency and avoid cross-subsidies, where a public service operator engages in other activities as well as the compensated services subject to public transport service obligations, the accounts of the public services must be separate from those of the other activities and, where applicable, the accounts of each compensated service separated so as to meet at least the following conditions-

- (a) the operating accounts corresponding to each of these activities must be separate and the proportion of the corresponding assets and the fixed costs must be allocated in accordance with generally accepted accounting practice and tax rules in force ,
- (b) no variable costs, contribution to fixed costs or profit connected with any other activity of the public service operator may be charged to the public service in question , and
- (c) the costs of the public service must be balanced by operating revenue and payments from public authorities, without any transfer of revenue to another sector of the public service operator's activity.

(5) The method of compensation must promote the maintenance or development of-

- (a) effective management by the public service operator, and
- (b) the provision of passenger transport services of an appropriately high standard of service quality.

### **Rail rolling stock**

**11.- (1)** Ahead of launching a competitive tendering procedure, a competent authority must-

- (a) assess whether measures are necessary to ensure effective and non-discriminatory access to suitable rolling stock, and
- (b) publish their findings on their website.

(2) The assessment carried out under paragraph (1) must take into account the presence of rolling-stock leasing companies and any other sources of suitable rolling stock of which the competent authority is aware.

(3) Appropriate measures to ensure effective and non-discriminatory access to suitable rolling stock under paragraph (1)(a) may include-

- (a) the acquisition by the competent authority of the rolling stock used for the execution of the public service contract with a view to making it available to the selected public service operator at market price or as part of the public service contract;
- (b) the provision by the competent authority of a guarantee for the financing of the rolling stock used for the execution of the public service contract at market price or as part of the public service contract, including a guarantee covering the residual value risk;
- (c) a commitment by the competent authority in the public service contract to take over the rolling stock at predefined financial conditions at the end of the contract at market price;
- (d) cooperation with other competent authorities in order to create a larger pool of rolling stock.

(4) If the rolling stock is to be made available to a new public service operator, the competent authority must include in the tender documents any available information about the cost of maintenance of the rolling stock and about its physical condition.

## **PART 3**

### **Award and modification of public service contracts**

#### **Application and exclusions**

**12.- (1)** Unless paragraph (2) applies, a public service contract must be awarded in accordance with this Part.

(2) This Part does not apply to the award of service contracts or public service contracts for public passenger transport services by bus or tram except where such contracts take the form of services concession contracts.

(3) For the purpose of this regulation -

"public service contracts" are defined in the Public Contracts Regulations 2015(a) (for England and Wales) and the Public Contracts (Scotland) Regulations 2015(b) (for Scotland),

"services concession contracts" are defined in regulation 2(1) of the Concession Contracts Regulations 2016 (for England and Wales) and regulation 2(1) of the Concession Contracts (Scotland) Regulations 2016 (for Scotland), and

"service contracts" are defined in the Utilities Contracts Regulations 2016(c) (for England and Wales) and the Utilities Contracts (Scotland) Regulations 2016(d) (for Scotland).

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(a) S.I. 2015/102. Amended by S.I. 2016/275, there are other amending instruments, **but none is relevant.**

(b) S.S.I. 2015/446. Amended by S.S.I. 2016/47 and S.S.I. 2020/468.

(c) S.I. 2016/274. Amended by S.I. 2019/489, S.I. 2020/1319, S.I. 2021/573, S.I. 2021/787 and S.I. 2021/1221.

(d) S.S.I. 2016/49. Amended by S.S.I. 2021 and S.S.I. 424.

### **Provision of passenger transport services by a competent local authority**

13.- (1) Unless prohibited by any enactment or rule of law, any competent local authority or a group of authorities providing integrated public passenger transport services may decide to---

- (a) provide public passenger transport services itself, or
- (b) award a public service contract directly to a legally distinct entity over which at least one of the competent local authorities exercises control similar to that exercised over its own departments.

(2) For the purpose of determining whether an authority exercises control similar to that exercised over its own departments, the following factors must be taken into account-

- (a) the degree of the authority's representation on administrative, management or supervisory bodies,
- (b) specifications relating to the authority in the articles of association,
- (c) whether any person other than the authority exerts a decisive influence, directly or indirectly, on the activities of the entity,
- (d) effective influence and control over strategic decisions and individual management decisions of the legally distinct entity.

(3) The condition for applying paragraph (2) is that the internal operator and any entity over which that operator exerts any influence-

- (i) perform their public passenger transport activity within the geographical area of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the geographical area of neighbouring competent local authorities, and
- (ii) do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the geographical area of the competent local authority;

(4) Notwithstanding paragraph (3), an internal operator may participate in fair, competitive tenders, provided that-

- (i) there are 2 years or less of its directly awarded public service contract remaining,
- (ii) the competent authority has taken a final decision to submit the public passenger transport services covered by the internal operator contract to fair competitive tender, and
- (iii) the internal operator has not entered into any other directly awarded public service contract.

(5) In the absence of a competent local authority, paragraphs (2) to (4) apply to a competent authority with national competence for the benefit of a geographical area which is not national, provided that the internal operator does not take part in competitive tenders concerning the provision of public passenger transport services outside the geographical area for which the public service contract has been granted.

### **Award of contracts under competitive procedure**

14.- (1) A competent authority must award a public service contract on the basis of a competitive tendering procedure unless-

- (a) an alternative procedure is available under these Regulations, or
- (b) it is relying on the internal operator exemption referred to in regulation 13(1)(b) (internal operator exemption).

(2) The procedure adopted for competitive tendering must be open to all operators, fair, transparent and non-discriminatory in accordance with the principles set out in regulation 4.

(3) Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with the principles set out in paragraph (2) in order to determine how best to meet specific or complex requirements.

(4) A competent authority may apply the following procedure-

- (a) make public their intentions to award a public service contract for public passenger transport services by rail by publishing an information notice in accordance with regulation 22 (pre-award publication);
- (b) any information notice published under sub-paragraph (a) must contain a detailed description of-
  - (i) the services that are the subject of the contract to be awarded, and
  - (ii) the type and the duration of the contract;
- (c) the competent authority must specify a period within which operators can express their interest which must be no less than 60 days after the date on which the information notice was published;
- (d) if after the expiration of that period -
  - (i) only one operator has expressed its interest in participating in the procedure to award the public service contract,
  - (ii) that operator has duly proved that it will in fact be able to provide the transport service complying with the obligations established in the public service contract,
  - (iii) the absence of competition is not the result of an artificial narrowing of the parameters of the procurement, and
  - (iv) no reasonable alternative exists,the competent authority may start negotiations with this operator in order to award the contract without further publication of an open tendering procedure.

(5) In order to increase competition between railway suppliers, a competent authority may decide that contracts for public passenger transport services by rail covering parts of the same network or package of routes are to be awarded to different railway suppliers and, to that end, before launching a competitive tendering procedure under this regulation, it may decide to limit the number of contracts to be awarded to the same railway operator.

(6) A competent authority must, while ensuring the legitimate protection of commercially sensitive information and commercial interests, make relevant information available to all interested parties to enable them to prepare an offer under a competitive tendering procedure and to draft a well-informed business plan.

(7) Relevant information under paragraph (6) includes -

- (a) information on passenger demand, fares, costs and revenues related to the public passenger transport covered by the competitive tendering procedure, and
- (b) details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock.

(8) Rail infrastructure managers must support competent authorities in providing all relevant infrastructure specifications.

(9) In this regulation-

" information notice" means the information published in accordance with regulation 22, and

"railway infrastructure manager " means any body or undertaking that is responsible for the operation, maintenance and renewal of railway infrastructure on a network and participating in its development" .

#### **Direct award of passenger services contracts under the de minimis exception**

**15.-(I)** Unless prohibited by any enactment or rule of law , the competent authority may decide to award a public service contract directly-

- (a) where its average annual value is estimated at less than £875,000 or, in the case of a public service contract including public passenger transport services by rail, less than £6,500,000, or
- (b) where it concerns the annual provision of less than 300000 kilometres of public passenger transport services or, in the case of a public service contract including public passenger transport services by rail, less than 500000 kilometres.

(2) In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 road vehicles, those thresholds may be increased to either an average annual value estimated at less than £1,750,000 or to an annual provision of less than 600000 kilometres of public passenger transport services.

#### **Emergency measures**

**16.- (1)** In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take emergency measures.

(2) The emergency measures must take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations.

(3) The publication requirement in regulation 22 does not apply where a contract is awarded under this regulation.

#### **General direct award provision for rail**

**17.- (1)** Unless prohibited by any enactment or rule of law, a competent authority may make a direct award of a public service contract concerning transport by rail.

(2) In the case of a direct award of a public service contract for transport by rail under this regulation, the competent authority must, while ensuring the legitimate protection of commercially sensitive information and commercial interests, publish the following information on its website within one year of granting the award-

- (a) name of the contracting entity, its ownership and, if relevant, the name of the party or parties exercising legal control,
- (b) duration of the public service contract,
- (c) description of the passenger transport services to be performed,
- (d) description of the parameters of the financial compensation,
- (e) quality targets, such as punctuality and reliability and rewards and penalties applicable, and
- (f) where there is an extended contract duration, any conditions relating to assets necessary for the provision of the services.

#### **Direct award of rail contracts in exceptional circumstances**

**18.- (1)** Unless prohibited by any enactment or rule of law, a competent authority may, where it considers that it is justified by exceptional circumstances, decide to temporarily directly award a new public service contract for public passenger transport services by rail which were previously awarded on the basis of a competitive tendering procedure.

(2) For the purposes of paragraph (1), exceptional circumstances include situations in which-

- (a) a number of competitive tendering procedures are already being run by the competent authority or other competent authorities which could affect the number and quality of bids likely to be received if the contract were to be the subject of a competitive tendering procedure, or
- (b) changes to the scope of one or more public service contracts are required in order to optimise the provision of public services.

(3) The competent authority must publish any contract awarded pursuant to this regulation, taking into consideration the legitimate protection of commercially sensitive information and commercial interests.

(4) Notwithstanding regulation 9(1)(c), the duration of a contract awarded pursuant to this regulation must be proportionate to the exceptional circumstances concerned.

(5) A subsequent contract that concerns the same public service obligations must not be awarded on the basis of this provision.

#### **Direct award of rail contracts due to structural and geographical characteristics**

**19.-** (1) Unless prohibited by any enactment or rule of law, the competent authority may award a public service contract for public passenger transport services by rail directly-

- (a) where it considers that the direct award is justified by the relevant structural and geographical characteristics of the market and network concerned, in particular relating to-
  - (i) size,
  - (ii) demand characteristics,
  - (iii) network complexity,
  - (iv) technical and geographical isolation,
  - (v) the services to be covered by the contract; and
- (b) where such a contract would result in an improvement in quality of services or cost-efficiency, or both, compared to the previously awarded public service contract.

(2) Where the competent authority awards a public service contract under paragraph (1) it must set out measurable, transparent and verifiable performance requirements and include them in the contract.

(3) The performance requirements must, in particular, cover-

- (a) punctuality of services,
- (b) frequency of train operations,
- (c) quality of rolling stock, and
- (d) transport capacity for passengers.

(4) A contract awarded under this regulation must include--

- (a) specific performance indicators enabling the competent authority to carry out periodic assessments, and
- (b) effective and deterrent measures to be imposed in case the public service operator fails to meet the performance requirements.

(5) The competent authority must-

- (a) periodically assess whether the public service operator has achieved its targets for meeting the performance requirements as set out in the contract, and
- (b) publish its findings on its website.

(6) The first periodic assessment undertaken under paragraph (5)(a) must take place no more than five years after the date on which the contract was entered into, with subsequent assessments taking place at intervals not exceeding five years following the first periodic assessment.

(7) The competent authority must take appropriate and timely measures, which may include the imposition of effective and deterrent contractual penalties if any required improvements in quality of services or cost-efficiency, or both, are not achieved.

(8) The competent authority must publish a contract awarded pursuant to this regulation, taking into consideration the legitimate protection of commercially sensitive information and commercial interests.

### **Direct award of rail contracts when the operator manages the entire or major part of the railway infrastructure**

**20.- (1)** Unless prohibited by any enactment or rule of law, where railway infrastructure 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), the competent authority may award a public service contract for public passenger transport services by rail directly where it concerns operating only passenger rail services by an operator which manages the entire or the major part of the railway infrastructure on which the services are provided.

(2) The competent authority must publish on its website a contract awarded pursuant to this regulation, taking into consideration the legitimate protection of commercially sensitive information and commercial interests.

### **Modifying a public service contract**

**21.- (1)** A competent authority may modify a public service contract if the modification -

- (a) is a permitted modification under Schedule I,
- (b) is not a substantial modification, or
- (c) is a below-threshold modification.

(2) A "substantial modification" is a modification which would-

- (a) materially change the scope of the public service contract, or
- (b) materially change the economic balance of the public service contract in favour of the operator.

(3) A modification is a "below-threshold modification" if-

- (a) the modification would not itself increase or decrease the estimated value of the public service contract by more than 10 %, and
- (b) the modification would not materially change the scope of the public service contract.

(4) In this regulation, a reference to a modification changing the scope of a public service contract is a reference to a modification providing for the provision of services of a kind not already provided for in the contract.

(5) Paragraph (6) applies if, on modifying a public service contract under this regulation, the competent authority considers that-

- (a) the modification could reasonably have been made together with another modification made to the public service contract under this regulation, and
- (b) that single modification would not have been permitted under paragraph (1) of this regulation.

(6) The modification is to be treated as not within paragraph (1) of this regulation.

(7) Except as provided for in paragraph 8 of Schedule I (transfer on corporate restructuring), a competent authority may not modify a public service contract so as to change the operator.

(8) Regulations 12 to 20, 22 (pre-award publication) and 23 (post-award publication) do not apply in relation to the award of a contract to modify a public service contract where the modification is made in accordance with this regulation.

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(a) SJ . 2016/645, to which there have been amendments not relevant to these Regulations.

## PART 4

### Publication requirements

#### Pre-award publication

22.- (1) Each competent authority must, for each public service contract, unless either of the circumstances in paragraph (3) apply, and subject to paragraph (6), take the necessary measures to ensure that at least one year before the relevant day, the following information at least is published on its website-

- (a) the name and address of the competent authority,
- (b) the type of award envisaged,
- (c) the services and areas potentially covered by the award, and
- (d) the envisaged starting date and duration of the public service contract.

(2) In this regulation, "the relevant day" means-

- (a) in the case of a direct award, the day on which the public service contract is entered into;
- (b) in the case of a competitive tendering procedure, the earlier of-
  - (i) the day on which a final version of the invitation to tender is published on the competent authority's website, or
  - (ii) the day on which a final version of the invitation to tender is issued to one or more public service operators.

(3) The competent authority may decide not to publish this information where-

- (a) a public service contract concerns an annual provision of less than 50,000 kilometres of public passenger transport services; or
- (b) a contract is awarded under regulation 16 (emergency measures).

(4) If the information changes after its publication, the competent authority must publish on its website a rectification as soon as possible.

(5) A rectification under paragraph (4) is without prejudice to the relevant day.

(6) A competent authority's duty to comply with paragraph (1) (requirement to publish a year ahead of time) is not enforceable under Part 5 of these Regulations (enforcement), where-

- (a) the specified information is published before the relevant day; and
- (b) where the publication concerns-
  - (i) a direct award, the timing of that publication is sufficient to achieve the purpose stated in paragraph (7)(a); or
  - (ii) a competitive tendering procedure-
    - (aa) that failure does not cause an interested supplier a significant disadvantage compared to the incumbent, and
    - (bb) the timing of that publication is sufficient to achieve the purpose stated in paragraph (7)(b).

(7) The purpose of the pre-award publication is-

- (a) in the case of a direct award, to enable an interested party to raise objections to the very principle of making a direct award as intended by the competent authority before the award is made, but the purpose does not include providing all of the information that is necessary to enable the submission of an offer nor does it include enabling any comparative assessment of offers;
- (b) in the case of a competitive tendering procedure, to give a supplier a period of time to prepare for the invitation to tender that is sufficient to enable it to take part effectively in that procedure.

(8) In this regulation , "the incumbent" means the public service operator (if any) performing an existing public service contract covering the services and areas referred to in paragraph (1)(c).

#### Post-award publication and right to request reasons for direct award

23.- (1) The competent authority must, while ensuring the legitimate protection of commercially sensitive information and commercial interests, publish on its website the relevant information about the public service contract or general rule set out in Schedule 2.

(2) The information referred to in paragraph (1) must be published before the end of the period of two months beginning with the day on which the authority enters into the contract or makes the rule.

(3) When so requested by an interested party within the relevant period, a competent authority must forward to it the reasons for its decision for directly awarding a public service contract.

(4) For the purposes of paragraph (3), "the relevant period" means the period of one month beginning with the day on which the competent authority publishes information about the public service contract as required by paragraph (1).

## PARTS

### Enforcement

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

24.- (1) An action in respect of a failure by the 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-

- (a) if the person bringing the action has made a request for information under regulation 26 (pre-action information requests), the date on which the notice under paragraph (4) of this regulation is given, or
- (b) in any other case, the publication date for the contract or rule.

(2) In this paragraph " the publication date" for a public service contract or general rule is the date on which information about the contract or rule is published as required by regulation 23.

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

(4) For the purpose of paragraph (1)(a), 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).

(5) If the action is an application for judicial review, section 31 of the Senior Courts Act 1981(a) (applications for judicial review) applies to the application as if, in subsection (3) of that section , for the words " has a sufficient interest in the matter to which the application relates", there were substituted " is an interested party within the meaning of regulation 3 of the Public Services 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-

- (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

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(a) 1981 c. 54.

- (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(a).

**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 the public service contract or make the 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 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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(a) 2022 c. 23.

## PART 6

### Miscellaneous

#### Certain pre-existing contracts

27. The application of these Regulations to certain pre-existing contracts is limited as follows-

- (a) public service contracts awarded before 26 July 2000 on the basis of a fair competitive tendering procedure may continue until they expire;
- (b) public service contracts awarded before 26 July 2000 on the basis of a procedure other than a fair competitive tendering procedure may continue until they expire, but not beyond 2 December 2039;
- (c) public service contracts awarded from 26 July 2000 and before 3 December 2009 on the basis of a fair competitive tendering procedure may continue until they expire, but not beyond 2 December 2039;
- (d) public service contracts awarded from 26 July 2000 and before 24 December 2017 on the basis of a procedure other than a fair competitive tendering procedure may continue until they expire, provided they are of limited duration comparable to the durations specified in regulation 9;
- (e) public service contracts for public passenger transport services by rail directly awarded on the basis of a procedure other than a fair competitive procedure from 24 December 2017 and until 2 December 2019 may continue until they expire, but no longer than 10 years; and
- (f) public service contracts referred to in this regulation may continue until they expire where their termination would entail undue legal or economic consequences.

#### Revocations

28. These Regulations revoke---

- (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(a), and
- (b) the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020(b).

#### Consequential amendments

29.- (1) In the Subsidy Control Act 2022(c), in section 48 (legacy and withdrawal agreement subsidies), in subsection (1)(b) -

- (a) after "given" insert "at any time";
- (b) after "road" insert "as revoked and replaced by the Public Service Obligations in Transport Regulations 2023".

(2) In the Railways Act 1993(d), in section 136(11), for the definition of "the public service obligations regulations" substitute "means the Public Service Obligations in Transport Regulations 2023".

Signatory text

*Name*

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(a) EUR 1370/2007. as amended by S.I. 2020/504 and S.I. 2020/1470.  
(b) S.I. 2020/1470.  
(c) 2022 c. 23.  
(d) 1993 c.43. Section 136(11) was amended by S.I. 2010/402.

## 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 or 23, including by reference to-
    - (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 5, 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 that differ from, or incompatible with, those already provided for in that 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 that contract,
  - (c) the competent authority considers that the difference or incompatibility would result in-
    - (i) disproportionate technical difficulties in the 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 circumstances.

## SCHEDULE 2

Regulation 23

### Published information 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 and areas covered by the award,
- (d) the starting date and duration of the public service contract or general rule,
- (e) the date of award,
- (f) [the estimated value of the public service contract or, if applicable, the highest and lowest tender taken into consideration for the public service contract,]
- (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 and medium-sized enterprises,

- (i)
  - (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),  
the name and address of the public service operator and whether or not-
    - (i) the public service operator is a small and medium-sized enterprise,
    - (ii) the public service contract was awarded to a group of economic operators (joint venture, consortium or other),
  - (j) where appropriate, a statement as to whether the public service contract has been, or may be, subcontracted,
  - (k) a reference to the right to take enforcement action under Part 5 of these Regulations,
  - (l) the date(s) and reference(s) of previous publications 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 dispatch of the notice.

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Under section 1(1) of the Retained EU Law (Revocation and Reform) Act 2023 (c. [TBC]) ("the Act"), the legislation listed in Schedule I is revoked at the end of 2023 to the extent specified there. Section 14(2) and (3) of the Act enable regulations to be made to revoke and replace such instruments with provision to achieve the same or similar objectives, or to make appropriate alternative provision. Section 19 of the Act enables regulations to be made to make provisions a Minister of the Crown considers appropriate in consequence of the Act, including provisions modifying any enactments.

These Regulations revoke and replace 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 make consequential amendments to update cross-references in primary legislation after the revocation and restatement.

The purpose of these Regulations is to define how competent authorities may act in the field of public passenger transport to guarantee the provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed. To this end, these Regulations lay down the conditions under which competent authorities, when imposing or contracting for public service obligations, compensate public service operators for costs incurred or grant exclusive rights in return for the discharge of public service obligations.

A full impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary sector or community bodies is foreseen.

**Annex B:** Explanatory table accompanying the replacement UK SI replacing R1370 and the original R1370 based on the draft SI

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
<b>Preamble and Powers</b>	Sets out laying/CIF date and powers under which regs are made	No corresponding article	New provision  Powers: REUL Bill/Act 14(2) and (3) (revoke and replace) and (19)	Added in line with UK drafting conventions.	
<b>1 Citation, commencement and extent</b>	Sets out citation, commencement and extent of SI	No corresponding article	New provision	Added in line with UK drafting conventions	
	(1) Regs. apply to national/ international operation of public passenger services by rail/other track based modes /road in E/W/S	Art.1(2)	Extent limited to England, Wales and Scotland.	Added in line with UK drafting conventions.  Ref. to national/international operation retained on basis they empower relevant authority to procure national and international services that fall within their competence.	The territorial extent of the SI is intended to be GB and does not extend to NI.  The Department's current position is that there will be separate SIs for GB and NI and DfT is not currently instructed to legislate for NI.

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(2) Exclusions: heritage passenger transport services/works concessions contracts	Art. 1(2)/(3)	No substantive amendment		
	(3) Definitions of heritage passenger transport services/works concession contracts	Art.1(3) definition of works concession contracts  No definition of heritage transport in original.	Addition of reference to Concession Contracts (Scotland) Regs 2016 and definitions of heritage passenger transport services.  Reference to rolling stock removed.	Added in line with UK drafting conventions.  Following consultation with industry definition of heritage passenger transport services has been closely aligned to original wording in R1370.	
	(1) Definitions of key terms	Art.2	<u>Definitions amended:</u> <ul style="list-style-type: none"> <li>• Bus</li> <li>• Competent authority</li> <li>• Competent local authority</li> </ul>	Under EU law, certain terms are deliberately left undefined.	We have reworded R1370 for greater clarity and to comply with best practice of UK drafting, with minimal (if any) changes to legal effect or application.  As far as possible we have adopted definitions from existing UK law.

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
			<ul style="list-style-type: none"> <li>• public service operator</li> <li>• public service obligation</li> <li>• Exclusive right</li> <li>• Public service contract</li> <li>• Value</li> </ul> <p><u>Definitions removed:</u></p> <ul style="list-style-type: none"> <li>• Public passenger transport services by rail'</li> </ul> <p><u>Definitions added:</u></p> <ul style="list-style-type: none"> <li>• Interested party</li> <li>• Public authority</li> <li>• Public passenger transport</li> <li>• Procurement</li> <li>• Rail</li> <li>• Small and medium-sized enterprises</li> <li>• Track-based mode</li> <li>• Tram</li> </ul>	<p>New definitions and amendments made in line with UK drafting conventions and to mirror other legislation.</p> <p>Note new definitions of bus and tram.</p> <p>Definition of competent local authority amended to include express reference to TfL following consultation and concern that it would not otherwise be covered.</p>	<p>However, not all concepts referred to in R1370 are defined in UK law.</p> <p>We have consulted with industry audiences to help avoid unintended consequences.</p>

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
			<ul style="list-style-type: none"> <li>Tramway</li> </ul>		
	(2) Factors to be taken into account in determining whether person operates on commercial basis for purposes of definition of “public authority”	No corresponding article	New provision	Non-exhaustive list Included for ease of reference. Drafting mirrors equivalents in Procurement Bill cl.2(3) and (4).	
	(1) Sets out objectives a competent authority must have regard to when applying these regs.	Preamble recital 9/20 (in part)	New provisions		Future UK public sector procurement exercises will be underpinned by these principles, taken from the Procurement Bill, which does not apply (due to being Exempted contracts under the Proc Bill) to contracts awarded under R1370. To maintain the application of general procurement principles while using the principles best suited to the UK market (rather than imitating EU principles) we replicated the provisions of the Procurement Bill in the SI.
	(2) Requirement of equal treatment unless differentiation is justified			General principles of EU law such as fairness, non-discrimination and transparency will cease to apply. Currently, they	
	(3) Requirement to take steps to prevent a party	No corresponding article			

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
	being advantaged/ disadvantaged when different treatment is applied			influence how R1370 is implemented.  Intention is to align with the objectives listed in clause 12 of the Procurement Bill rather than codify EU principles.	
	(4) Requirement to have regard to particular barriers faced by SMEs	Preamble recital 9/23		Reflects Procurement Bill	
	(a) Calculation of Net Financial Effect	Annex 1, para. 1(2)	Calculation methodology added	Clarification plus moved for ease of reference.  Clarified to reflect the need to establish a quantifiable effect on other transport activities.	
	(b) Definition of reasonable profit	Annex 1, para. 1(6)	Amended definition	Amended to reflect the nature of UK PSCs. Other changes	Amended to reflect more closely the nature of UK rail passenger services contracts.

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
				are as a result of transposition.	
	(1) Requirement for competent authorities to set out the specifications for public service obligations in the provision of public passenger transport services and the scope of their application and factors that may/must be taken into account in doing so.	Art. 2a(1) (incorporating part of the definition of “public service obligation” from Art. 2(e))	Amended wording  Adjusted to refer to “appropriateness” rather than “proportionality.	Consolidation/ clarification of requirements from Art.2(a) and (e).  Use of UK rather than EU terminology.	
	(2) Requirement for specifications in para.1 to be consistent with the objectives of	Art.2a(1)	Amended wording	Amended in line with UK drafting conventions.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	relevant public transport policies				
	(3) Provides that public service obligations may concern cross-border public transport services	Art. 1 (purpose and scope) – second sentence of para. 2	No substantive amendment	n/a	
<b>7 Public service contracts and general rules</b>					
	(1) A competent authority must, subject to para.2, grant an exclusive right/compensation in return for the discharge of public service obligations via a public service contract	Preamble recital. 9	No substantive amendment	n/a	
	(2) A PSO which aims to establish maximum tariffs for all/certain passengers may be	Art.3(2)	Formatting amended	Amended in line with UK drafting conventions.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	effected by a general rule				
	(3) Competent Authority to compensate PSO for NFE on costs/revenues generated in complying with tariff obligations effected by a general rule in a way that avoids overcompensation	Art. 3(2) / 4(1) / Annex 1	Amended wording	Removal of final sentence of Art.3(2) as not required for UK drafting.	See detail at reg.5(b) above.
	(4) Requirements for public service contracts and general rules	Art.4(2)	Formatting amended	Amended in line with UK drafting conventions.	
	(5) Sets out costs that may be included under para. 4(c) (costs connected with the provision of services)	Art.4(1)	Minor amends	Amended in line with UK drafting conventions  Re-drafted into list format	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(6) Arrangements for the allocation of revenue from ticket sales	Art.4(2)	Formatting amended	No substantive change.	
	(7) Requirement for PSO to provide competent authority with essential information whilst ensuring protection of commercially sensitive information.	Art.4(8) first sentence	Incorporation of requirement to ensure the legitimate protection of commercially sensitive information and commercial interests.	Commercially sensitive information and commercial interests used for drafting consistency.	
	(1) Requirement to set out sub-contracting permissions in tender documents/contracts	Art.4(7)	No substantive change.	Amended for clarity in line with UK drafting conventions.	
	(2) Requirements for contracts relating to the administration of				

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
	<p>public passenger transport services to stipulate that PSO's must perform a major part of the passenger transport service themselves</p>				
	<p>(3) Provides that PSCs covering the design, construction and operation of passenger transport services may permit subcontracting of the whole of those operations and must set out the conditions applicable to subcontracting</p>				

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(1) Sets out maximum contract lengths, subject to paras. (2) or (3)	Art. 4(3)	Formatting amended.	Amended in line with UK drafting conventions.	
	(2) Circumstances under which the maximum contract length may have a duration of 50% longer	Preamble recital. 15/Art. 4(4)	Clarification	Reference to “special characteristics and constraints of a particular geographical area” not included as this is considered to change intended scope from R1370 (“outermost regions”).  Clarified to reflect understood intention that contract term may in certain circumstances be 50% longer.	
	(3) Circumstances under which a longer contract duration than prescribed under	Art. 4(4)	Formatting amended	Amended in line with UK drafting conventions	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	para. (2) may be awarded				
	(4) Exceptions to paras. (2) and (3): contracts made under reg. 16 (emergency measures) or 18 (temporary direct awards).	Art. 5(3a)/5(5)	Formatting amended	All time limits moved to be within the same provision	
	(1) All PSCs/general rules (with the exception of PSCS awarded under reg.14) must comply with this regulation to demonstrate overcompensation has been avoided	Art.6(1)/Annex 1 para.1	Cross-references amended to reflect new SI numbering	Overcompensation provisions amended to better reflect UK market and consolidated within a single regulation	See detail at reg.5(b) above.
	(2) Compensation amount not to exceed amount corresponding to NFE on	Annex 1 para.2	Amended formatting	Amended in line with UK drafting conventions	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	costs/revenue of compliance				
	(3) Financial effects to be assessed in comparison with situation if PSO had not been met				
	(4) Accounts of public services to be kept separate from those of other activities/assets/costs to be allocated in accordance with accounting standards	Annex 1. para.5		Reg.10(4)(a) - "generally accepted accounting practice" used rather than: "in accordance with the accounting and tax rules in force".	
	(5) Method of compensation must promote effective management/provision of high-quality services	Annex 1. para.7			
	(1) Requirement, prior to launching a competitive	Art. 5(a)	Minor amendments	No time limit has been added - this reflects the policy	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	tendering procedure, to assess whether measures are necessary to ensure effective and non-discriminatory access to suitable rolling stock and publish findings			<p>intent that the assessment should be carried out and published prior to the tendering process.</p> <p>Reference to “assessment report” replaced with “findings”.</p> <p>Drafting considered sufficient to ensure authority makes and assessment and publishes this before launching the tender.</p>	
	(2) Assessment under para.(1) to take account of the presence of rolling stock leasing companies/any other sources of suitable rolling stock	Art. 5a(1)	No substantive amendment		

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(3) Details appropriate measures under para.(1)(a)	Art.5a(2)	No substantive amendment		
	(4) Where rolling stock is to be made available to a new PSO, the competent authority is required to include details of costs of maintenance/physical condition of RS in tender documents	Art. 5a(3)	No substantive amendment		
	(1) Requirement for PSC to be awarded in accordance with these regs unless para.(2) applies	Art.5(1)	No substantive amendment - preservation of status quo/transposition into UK law		
	(2) Part 3 disapplied for the award of contracts for local	Art. 5(1)			Existing Art. 5(2) does not apply to the direct award of contracts for public passenger transport services by

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
	services/tramway except where such contracts are services concession contracts				bus which do not take the form of service concession contracts.
	(3) Definitions	Art.5(1)	Definitions to Regs updated.	For clarity in line with UK drafting conventions.	
	(1) Power of competent authority to provide public passenger transport services themselves or via PSCs with legally distinct entities over which at least one of the competent local authorities exercises control similar to that exercised over its own departments	Art.5(2)	Clarification of language/ amended formatting	For clarity in line with UK drafting conventions	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(2) Factors in determining whether an authority exercises control similar to that exercised over its own departments	Art.5(2)(a)			
	(3) Conditions for applying para.(2)	Art.5(2)(b)			
	(4) Conditions under which an internal operator may participate in competitive tender	Art.5(2)(c)			
	(5) Application of paras. (2)-(5) in the absence of a competent local authority	Art.5(2)(d)			
		Art.4(4b),(5) and (6)	Articles removed from new SI	Requirements under TUPE etc. already enshrined elsewhere in legislation and can therefore be omitted.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(1) Requirement for competent authorities to award PSCs via competitive tender unless an alternative procedure is available under these regs/the internal operator exemption applies	Art.5(3)	Cross referencing amended to reflect new SI numbering	Clarification	
	(2) Procedure for competitive tendering must accord with principles in reg.4 (objectives)		Objectives altered as per regulation 4.	New objectives reflect Procurement Bill rather than EU principles, which will be lost on 31/12/23.	
	(3) Negotiations permitted following submission of tenders/pre-selection		Reference to para.(2) added	Clarification	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(4) Details procedure a competent authority may decide to apply in awarding PSC	Art.5(3b)	Amended formatting/Cross references added	Clarification	
	(5) To increase competition, competent authorities permitted to award rail contracts covering parts of the same network to be awarded to different suppliers/may limit the number contracts awarded to the same supplier	Art.5(6a)	No substantive amendment	n/a	
	(6) Competent authority to make relevant information	Art.4(8)		Amendment: addition of "commercial interests" as well as	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	available to all interested parties			“commercially sensitive information” to make sure that references are consistent throughout the SI.	
	(7) Scope of “relevant information” under para.(8)				
	(8) Rail infrastructure managers to support competent authorities in providing all relevant infrastructure specifications				
	(9) Definitions of “information notice” and “railway infrastructure manager” added	Art.5(3b)/7(2)	Definitions added	Clarification.  Definition of “railway infrastructure manager” added to future proof the SI – mirrors definition of “infrastructure manager” in SI 2016/645.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(1) Value of de minimis exception	Art. 5(4)	No substantive amendment		Note that amendments were considered by bus policy but have been dropped.
	(2) De minimis level for contracts directly awarded to SMEs operating <23 road vehicles				
	(1) Power of competent authority to take emergency measures	Preamble para.18/ Art.5(3a)/(4a)/(5)/(6)	Transposed with amendments	n/a	
	(2) Form of emergency measures	Preamble para.24/Art.5(5)	No substantive amendment	n/a	
	(3) Regulation 23 (publication requirement) to be disapplied where contract to be awarded under this reg.	Art.5(5)			
	(1) Power of competent authorities to make	Preamble para.18/	No substantive amendment	Article 8(2)(iii) not transposed to prevent	For BEIS/FCDO: this was cleared as one of the Bill amendments in 2022.

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	direct awards for rail	Art.5(3a)/(4a)/(5)/(6)		Art.5(6) sunset on 25/12/23	
	(2) Requirements to publish specified information within 1 year of making direct award and required content	Art. 7(3) Art. 5(6) Art. 7(3)	Clarification / to ensure continuance of publication requirement post sunset of Art 5(6)/7(3)	Expressly included in light of sunset of 5(6) and 7(3) in December 2023  Inclusion of requirement to ensure protection of commercially sensitive information and commercial interests, for consistency.  Clarification of requirement to publish conditions necessary for the provision of services only where a contract has been extended.	For BEIS/FCDO: this was cleared as one of the Bill amendments in 2022.
	(1) Power of competent authority to	Art.5(3a)	Removal of requirement to publish separate	No substantive change but requirement to	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	temporarily directly award PSCs in exceptional circumstances		substantiated decision.	publish a substantiated decision for awards under this reg. are now in Schedule 2, para (h).	
	(2) Scope of exceptional circumstances			Schedule 2 and reg. 23 to apply to all awards but the requirement to publish reasons applies only to awards under Regs 18 and 19. Moving this req't to Sch.2 has removed the need for a separate substantiated decision notice, which is deregulatory.	
	(3) Requirement to publish contracts awarded under this reg.				
	(4) Duration of contracts awarded under this reg. to be proportionate to the exceptional circumstances				
	(5) Subsequent contracts may not be awarded on the basis of this provision				
		Art.5(4a)	Removal of specific requirement to	The specific reference to a substantiated decision has been	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
			publish substantiated decision.	removed and instead extra elements incorporated where an award is made under this regulation, in Schedule 2 (which sets out the information that must be published under regulation 23). Regulation 23 and Schedule 2 apply to ALL awards. This removes the need for a separate notice.	
	(1) Conditions under which rail contracts may be directly awarded due to structural and geographical characteristics	Art.5(4a)	No substantive amendment	n/a	
	(2) Requirement to include performance requirements				

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
	(3) Required scope of performance requirements				
	(4) Contracts to include performance indicators/ measures for non-compliance		Minor amends		
	(5) Requirement to carry out periodic assessments/ publish findings		Change to required publication method	Amended to require publication of findings on the CA's website.	
	(6) Periodic assessments to take place at no more than 5 yearly intervals		No substantive amendment	n/a	
	(7) Competent authority to take measures/impose penalties if required improvements not achieved			Removal of power to suspend or terminate contract if performance standards not met. A CA can only suspend/terminate if	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
				provided for in the contract therefore no need for this to be in regs.	
	(8) Requirement to publish contracts	Art.5(4b)	No substantive amendment	n/a	
	1) Power to make direct awards for rail where the operator manages the entire/a major part of the railway infrastructure	Art.5(4b)	No substantive amendment	n/a	
	(2) Requirement to publish contracts				
	(1) Circumstances under which a competent authority may modify a PSC	New	New material change provisions to replace existing EU caselaw.	Permitted modifications added into new Schedule 1  (Based on Procurement Bill (cl.74) – except that: <ul style="list-style-type: none"> <li>• References to convertible</li> </ul>	

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
				contracts removed as not relevant <ul style="list-style-type: none"> <li>• References to light touch contracts removed, ditto</li> <li>• Reference to the financial threshold (for application of the mainstream rules) removed from below-threshold modification definition)</li> </ul>	
	(2) Definition of a “substantial modification”			Use of “operator” here as modifications relate to an extant contract.	
	(3) Definition of a “below-threshold modification”				
	(4) A refence to a modification changing the scope of a PSC to be a				

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
	reference to a modification providing for the provision of services of a kind not already provided for in the contract				
	(5) Circumstances where para.(6) to apply				
	(6) Modification to be treated as not within reg.21(1)				
	(7) Competent authority not to modify PSC where modification in accordance with this reg., except per Sch.1 para. 8 (transfer on corporate restructuring)			Use of “operator” here as modifications relate to an extant contract	
	(8) Regs. to be disapplied in				

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	relation to award of contract to modify a PSC where modification is made in accordance with this reg.				
	(1) Competent authorities to ensure the specified information is published on its website at least 1 year before the relevant day, unless para. (3) applies and subject to para. (6)	Art. 7(2)	Amended to make duty subject to exceptions in reg.20(3) and to impose a clear duty to publish the listed information.	Includes codification of EU caselaw that will otherwise lose its interpretive effect on 31/12/23 ( <i>Rudigier</i> and C-515/18) This is the addition of “subject to paragraph (6)”; see below.  Addition of reference to “for each public service contract” for clarification – makes clear this provision does not apply to variations etc.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(2) Definition of "relevant day"	New	Definition added	This was a Bill amendment drafted by Leading Counsel and OPC that has been moved to the SI to achieve certainty about when the one-year period runs to: there are concerns that " <i>launch of the invitation to tender procedure</i> " could mean submission of the PQQ response.	
	(3) Circumstances under which a competent authority may decide not to publish the information in para.(1)	Art.7(2)	Rewording of exclusion in Art.7(2) and addition of exclusion from reg.15.	Reg.20(3)(a) reworded for clarity.  Reg.20(3)(b) included so that this exclusion is set out within the regulation that imposes the duty.	
	(4) Requirement to publish a rectification		No substantive amendment	n/a	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(5) A rectification notice under para.(4) to be without prejudice to the relevant day.		Rewording	Replaced “launching date” with “relevant date” in line with above Bill drafting change.	
	(6) Circumstances whereby a CA’s duty to comply with reg.22(1) (requirement to publish a year ahead of time) is not enforceable under Part 5	New	New provision	Derives from EU case law.	
	(7) Purposes of pre-award publication			Derives from EU case law ( <i>Rudigier</i> ).	
	(8) Definition of “incumbent” added			Included to assist interpretation.	
	(1) Requirement for a competent authority to publish on its website the relevant	New	Required information set out in Schedule 2. Requirement to ensure legitimate protection of	Post-award information requirements are new. This was a Bill amendment and was drafted by to comply	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	information about the public service contract or general rule set out in Schedule 2.		commercially sensitive information and commercial interests added, for consistency. Clients to confirm.	with TCA Article 369(1).	
	(2) Date by which information under para.(1) to be published				Publication of awards within six months is a transparency requirement of the TCA Article 369(1).
	(3) Competent authority required to forward reasons for decision to an interested party following a request within the relevant period.	Art.7(4)	No substantive amendment		
	(4) Definition of "relevant period" under para.(3)	No corresponding article	Definition added	For clarity in line with UK drafting conventions.  Limitation to the relevant period taken	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
				from the Bill; see row above.	
	(1) One month Limitation period for actions in respect of failure to comply with these regs.	No corresponding article	New provision	This was a Bill amendment, to align with mainstream subsidy and procurement regime and obligations under TCA and to provide administrative certainty.	
	(2) Definition of "publication date" under para.(1)			Publication date to serve as start point for limitation period for bringing an action under these regs.	
	(3) Power of a court to extend the time limit in para.(1)				
	(4) Requirement for competent authority to give notice to interested party that the			Requirement to set out process for requesting/receiving pre-action information	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	authority has provided information in response to a pre-action request under reg.26			mandated by Art.369 TCA (covered by s.76 SCA 2022). R1370 carved out of s.76 therefore necessary to add this requirement to this SI; and see Reg.26.	
	(5) Application of s.25 Senior Courts Act 1981 to JR applications.			Addition of a standing requirement (see defn of “interested party”) was a Bill amendment and drafted by OPC to be in line with TCA Art 369(6);	
	(6) Definition of “action” under this reg.				
	(1) Circumstances under which a court may make a recovery order.	No corresponding article	New provision	Recovery regime necessary to comply with obligations under TCA Art.373(1) & (2)/in light of R1370	Under Art. 373(1) of the TCA, it is necessary to introduce a remedy of recovery of unlawful subsidy to accord with the new UK subsidy regime – this is to mirror the recovery remedy in the SCA for general

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
				carve out from SCA 2022	subsidies claims, as there is no current equivalent under R1370.
	(2) Definition of recovery order			Mirrors drafting in s.74 SCA 2022	
	(3) Scope of a recovery order				
	(4) Definition of "Subsidy" under this reg.				
	(1) Right of interested party to make a request for information about decision	No corresponding article	New provision	To comply with TCA Article 369(5).	In compliance with Art 369 of the TCA, this ensures that potential claimants have the opportunity to ask for information about subsidies (i.e. awards) that have been made, and where they do, the limitation period is extended by one month following the giving of the information. This aligns with s. 71 and s. 76 of the SCA.
	(2) Procedural requirements for				

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	information request				
	(3) Requirement for competent authority to provide information				
	(4) Procedural requirements for providing information				
	(5) Power to restrict information provided to protect commercially sensitive/confidential information				
	(6) Permitted use of information provided				
<b>27 Certain pre-existing contracts</b>	Limitations on application of these regs to certain pre-existing contracts	Art. 8	Deletion of obsolete provisions and amendment to date until which	Removal of inert provisions.  Codification of EU caselaw currently applicable to some	Case law currently applies to a small number of existing contracts awarded before 26 July 2000 following competitive tendering or other forms of award. This case law allows the maximum contractual term to last

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
			existing contracts may continue.	existing contracts (C-45/19 - <i>Compañía de Tranvías de La Coruña</i> )	until 3 December 2039. This case law is replicated to maintain the maximum contractual term for the limited number of contracts affected to avoid ambiguity. The wording of Art. 8(3)(c) R1370, applicable to contract awarded before 3 December 2009, has been mirrored. Both articles relate to historic contracts, very few of which (if any) are likely to still be in place. Accordingly, this is a low impact change included to maintain and clarify status quo.
<b>28 Revocations</b>	Details of regulations revoked by these regs.	No corresponding article	New provision: revokes Reg.1370/2007 and its EU exit Reg 2020/504.	In line with UK drafting requirements.	
<b>29 Consequential amendments</b>	(1) Amendment to s.48 Subsidy Control Act 2022	n/a	To ensure the “safe haven” provision in the SCA (S.48(1)(b)) updates the cross-reference to Regulation 1370/2007. The	This ‘safe haven’ needs to be maintained to ensure that certain subsidies do not fall under both regimes in parallel, which would nullify the benefits of having	

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
			cross-reference is updated so that awards under R1370 are not caught by the Subsidy Control Requirements. See Policy Instructions paras 21, 46 & 53.	a bespoke subsidy regime for public transport. Its inclusion is important as without it, authorities will have to comply with the subsidy control requirements under the SCA as well as R1370 and could be challenged for non-compliance under both regimes.	
	(2) Amendment to s.136(11) Railways Act 1993	n/a	Amend reference to R1370 to new SI	Paragraph 21 of Schedule 2 to the Procurement Bill includes an exemption for contracts made under R1370 by cross reference to section 136(11) of the Railways Act 1993.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
				This exemption needs to be preserved, hence this amendment of the relevant section of the Railways Act to refer to these Regulations instead of to R1370.	
	(1) Circumstances under which a modification is a “permitted modification”	No corresponding article	New provision	Requirement for permitted modification to be included in notices included for transparency/to mirror Procurement Bill where relevant.  Pre and post notice requirements included for flexibility.	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(2) Modifications are permitted modifications if their purpose could otherwise be achieved by direct award of a PSC under reg. 16 (emergency powers)	No corresponding article	New provision	Emergency measures are the closest equivalent to the "extreme and unavoidable urgency" and "direct award to protect life" in the Procurement Bill therefore this has been used as the most relevant substitute.	
	(3) Conditions under which modifications are permitted in unforeseen circumstances	No corresponding article	New provision	Requirement that the modification does not increase the estimated value of the PSC by more than 50% is in line with EU case law (Presstext) and provides certainty as to when a new procurement is required	
	(4) Conditions under which modifications are	No corresponding article	New provision	Use of "operator" here as modifications	

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	permitted as a result of the materialisation of a known risk			<p>relate to an extant contract.</p> <p>Requirement that the modification does not increase the estimated value of the PSC by more than 50% is in line with EU case law (<i>Presstext</i>) and provides certainty as to when a new procurement is required.</p>	
	(5) Definition of "known risk"				
	(6) Factors that a competent authority must consider in determining whether a new PSC is in the public interest for the purposes of para.5				

<b>New Regulation</b>	<b>Summary</b>	<b>R1370 Article</b>	<b>Amendment</b>	<b>Reason for amendment/ comments</b>	<b>Additional detail for external audiences</b>
	(7) Conditions under which modifications are permitted where the modification provides for additional services	No corresponding article	New provision	<p>Reference to goods and works from Procurement Bill removed as not relevant.</p> <p>Requirement that the modification does not increase the estimated value of the PSC by more than 50% is in line with EU case law (<i>Presstext</i>) and provides certainty as to when a new procurement is required</p>	
	Novation/ assignment to be permitted modification if required following a corporate restructure	No corresponding article	New provision	Follows the Procurement Bill.	

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>	<b><i>Additional detail for external audiences</i></b>
	Sets out information to be published about PSC/general rule	No corresponding article	New provision	<p>Based on pre-award requirements in R1370, current (i.e. EU-derived) mainstream procurement rules for contract award notices and the TCA requirements for subsidy control.</p> <p>References to general rules added where relevant but generally these points of detail wouldn't appear to be applicable outside of a PSC.</p> <p>(h) Restriction of requirement to publish reasons for decision to awards made under regs.18/19 (see above, in place of a separate</p>	

<b><i>New Regulation</i></b>	<b><i>Summary</i></b>	<b><i>R1370 Article</i></b>	<b><i>Amendment</i></b>	<b><i>Reason for amendment/ comments</i></b>
				<p>substantiated or reasoned decision notice).</p> <p>(k) Reference to right to take enforcement action under Part 6 suggested in place of mainstream detailed rules e.g. to include name, address etc.</p>



Department  
for Transport

From the Minister of State  
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Fiona Hyslop MSP  
Minister for Transport  
The Scottish Government  
St. Andrew's House  
Regent Road  
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EH1 3DG

6 November 2023

Dear Fiona,

## **PUBLICATION OF GOVERNMENT RESPONSE TO CONSULTATION ON MINIMUM SERVICE LEVELS FOR PASSENGER RAIL**

I am pleased to announce that the Department for Transport has today published its response to the public consultation on implementing Minimum Service Levels (MSLs) for Passenger Rail<sup>1</sup> and expects to shortly lay the Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023 (the Regulations) before Parliament. These represent an important step towards meeting the Government's manifesto commitment to ensure that the impact of strikes on the travelling public and businesses is fair and proportionate.

The careful, evidence-led design of the MSLs will make possible a considerable improvement in the service that can be delivered during rail strikes. This will support passengers to make important journeys, including to get to work and to access key services, and limit impact on the economy; but this will be balanced with workers' ability to take strike action.

The consultation, which ran from 20 February 2023 to 15 May 2023, played a key role in developing our policy position for MSLs, supplemented by further direct consultation with the rail industry and trade unions. We received evidence from, and met with, numerous organisations with an interest in MSLs for passenger rail including train operators, infrastructure managers, regulators, trade unions, public authorities, and passenger groups among others. I am grateful for all the input received and sharing of expertise throughout the process.

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<sup>1</sup> <https://www.gov.uk/government/consultations/minimum-service-levels-for-passenger-rail-during-strike-action>

The response summarises our approach to the public consultation, the feedback and evidence we received, our work to develop MSLs policy, and the proposed minimum service levels set out in the Regulations that will be laid before Parliament shortly.

In summary, the proposed services and MSLs for each service are:

- **Train Operation Services**

The MSL is **set as the provision of the train operation services necessary to operate the equivalent of 40% of the operator's timetabled services according to the National Rail Timetable.**

- **Infrastructure services** (such as the operation of track and signalling).

The MSL is that infrastructure services will be provided during the strike in relation to priority routes (listed in the Regulations), between 6am - 10pm. An illustrative map [can be found on GOV.UK](#).

- **Light Rail services**

Where a strike affects infrastructure and/or operations on 11 specified light rail systems in Great Britain, the MSL is to provide the train operation services and infrastructure services necessary to operate the equivalent of 40% of the light rail operators timetabled services

Ensuring MSLs are proportionate has been an important and continual consideration during policy development.

The Regulations will only apply to strikes that take place after the date they come into force. However, they will have retrospective effect which means they will apply even where the notice of strike, and mandates to which the strike relates, were issued before the Regulations come into force. They will apply across England, Scotland and Wales following feedback from the public consultation and subsequent engagement with industry. As the rail network is not physically segmented by administrative boundaries it would not be possible to operate different levels of service in different regions in an operationally viable manner. This is particularly relevant for services that cross between England and Scotland.


Having observed the very significant disruption in December 2022 and January 2023, affecting a critical period of travel for the country, the Government intends, subject to Parliamentary approval, that the Regulations will be in force by early December, such that work notices can be used by employers to mitigate disproportionate impacts of strike action prior to Christmas, if needed.

The Regulations will be laid in Parliament shortly, and I have written to employers who will be in scope of the Regulations, and trade unions, to

encourage them to begin preparing for using work notices, should they be needed.

As with all employers who are able to make use of MSLs as a result of the regulations, we hope that those employers controlled and contracted by the devolved administrations will consider the benefits that MSLs can bring to the people and businesses they serve.

Yours ever,

A handwritten signature in black ink, appearing to read 'Huw Merriman'. The signature is written in a cursive style with a horizontal line underneath.

**HUW MERRIMAN MP**

**MINISTER OF STATE FOR TRANSPORT**



## Department for Transport

Fiona Hyslop MSP  
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5 July 2023

Dear Ms Hyslop,

I would like to offer my congratulations on your appointment as the Scottish Government's new Minister for Transport. As the Minister responsible for rail and High Speed Two (HS2) in the Department for Transport, there are a number of issues that would be useful to discuss with you in detail, particularly HS2 and the High Speed Rail (Crewe – Manchester) Bill ('the Bill').

I am pleased to be delivering the UK's first Anglo-Scottish hybrid bill, and appreciative of the Scottish Government's continued support in our endeavour to bring HS2 and its benefits to Scotland.

I would also like to reiterate our commitment to looking at alternatives to the Golborne Link, following its removal from the Bill last year, which will deliver similar benefits to Scotland, so long as these deliver for the taxpayer within the £96bn envelope allocated for the Integrated Rail Plan. Powers are included in the Bill for works that would likely be required for any alternative high-speed connection. These include platform extensions at Carlisle and Preston stations, and works to construct the Annandale depot for the stabling and maintenance of HS2 trains running to Scotland.

As this is the first hybrid bill in history to exercise powers on both sides of the Anglo-Scottish border, there are a number of areas where the Bill slightly modifies Scottish legislation, so as to provide policy parity across England and Scotland, with a consistent regulatory regime and approach to the construction of the HS2 scheme, and fair treatment of those affected across the project.

In February 2022, a Legislative Consent Memorandum was lodged to the Scottish Parliament recommending that the Scottish Parliament does not consent to, among other powers in the Bill, the powers over Crown land set out in Clause 54A of the Bill. Following discussions between DfT officials and Scottish government officials, it was agreed that the powers over Scottish Crown Estate land in Clause 54A could be removed from the Bill, on the condition that a letter of comfort was issued by the Scottish Minister for Transport which offered an assurance that there would be no acquisition by the Scottish Crown Estate of land required for the construction of HS2 works in Scotland. While the letter received from Jenny Gilruth MSP in October 2022 did confirm that Crown Estate Scotland does not intend to invest in the land at the proposed site of the Annandale depot, it only stated that Crown Estate Scotland will not invest in any land needed for HS2 without first consulting with Scottish ministers.

In light of this, I would be grateful for an updated letter to be issued confirming that no investment by Crown Estate Scotland in land required for HS2 will take place without consulting with the relevant UK Ministers, as well as Scottish Ministers. This will provide the UK Government with confidence that the removal of the Clause 54A powers will not introduce a risk of delay to the delivery of HS2 works in Scotland, with the increase in public expenditure that such delays would incur.

I would welcome the opportunity to extend my congratulations in person and to discuss this Bill further. I am copying this letter to the Secretary of State for Scotland and the Minister for the Cabinet Office.

Yours ever,

A handwritten signature in black ink, appearing to read 'Huw Merriman', written in a cursive style.

**HUW MERRIMAN MP**

**MINISTER OF STATE FOR TRANSPORT**



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for Transport

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Our Ref: MC/436663

25 September 2023

Dear Fiona,

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

Thank you for your letter of 11 September regarding your agreement to revoke Regulation (EC) No 1370/2007 for Great Britain and replace it with the Public Service Obligations in Transport Regulations 2023.

I am pleased that through the extensive engagement between our officials we have been able to reach agreement on the provisions contained in the Regulations. I understand the protocol in place, which requires a process of scrutiny by the Scottish Parliament. Please be assured my officials will remain available throughout this period should you require anything further.

I very much look forward to receiving your final response by 6 October and am extremely grateful for the engagement to date.

Yours sincerely,

**HUW MERRIMAN MP**

**MINISTER OF STATE FOR TRANSPORT**

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5 September 2023

Dear Huw,

### **Train station ticket office consultations**

I am writing to raise my concerns around the public consultations by Department for Transport sponsored train operating companies regarding potential ticket office closures at over 900 stations.

In terms of the impact on Scotland, while I welcome the confirmation that, at this stage, there are no plans to close the LNER ticket office at Edinburgh Waverley, I note with particular concern that Avanti's ticket office at Glasgow Central is included in these proposals for closure.

I appreciate that travel patterns and ticket purchasing preferences are changing. However, the current proposals of train operators controlled by the UK Government are draconian and disproportionate.

The Scottish Government has no plans to close any ScotRail ticket offices in Scotland and does not support the current policy approach of the UK Government. Specifically, I am concerned around the potential impact on people with reduced mobility who are, rightly, making strong representations on a range of potential difficulties this may create for access to rail services.

A common theme is around the reliance of still significant numbers of passengers on contact with station staff for the assistance they require. We know some disabled passengers cannot easily access online ticket purchasing and other services and it remains true that there are limitations with Ticket Vending Machines in terms of the availability of ticket types and ease of usage.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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More broadly, however, these proposals do not support our approach to increase rail patronage, to address systemic societal inequalities and to encourage modal shift - especially on medium to longer distance railway journeys. In addition, many passengers travelling between and across Scotland and England will potentially experience significant differences in the level of staff support they can expect to receive.

I look forward to receiving your response addressing my concerns.  
Yours sincerely



**FIONA HYSLOP**

Cc:

[redacted]  
[redacted]  
[redacted]

[redacted]  
[redacted]  
[redacted]

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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We invest in people Silver



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Huw Merriman  
Minister of State for Transport  
Department for Transport  
By email: [DfT.Ministers@df.gov.uk](mailto:DfT.Ministers@df.gov.uk)

11 October 2023

Dear Huw,

**THE PUBLIC SERVICE OBLIGATIONS IN TRANSPORT REGULATIONS 2023  
(REGULATIONS)  
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

Further to my holding reply of 11 September 2023 to your letter of 10 July 2023 I can confirm that the Scottish Parliament has given its approval to Scottish devolved matters being included in the Public Service Obligations in Transport Regulations 2023.

I will be grateful if our officials can continue to liaise on the detailed drafting of the SI and we look forward to seeing the final version of the SI before it is laid on 16 October 2023.

Yours sincerely



**FIONA HYSLOP**



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6 November 2023

Dear Fiona,

## **RE: Automated Vehicles Bill**

I am writing to inform you the UK Government will shortly introduce the Automated Vehicles Bill to the UK Parliament. The Automated Vehicles Bill is designed to enable the safe deployment of self-driving vehicles. It will cement the UK's position as a global leader in this high tech and high growth industry and deliver one of the world's most comprehensive legal frameworks for self-driving vehicles, with safety at its core.

I understand Department for Transport officials have had discussions on the proposals and policy intent, and I am grateful for the constructive manner of those discussions and the contribution of your officials. I have attached a final copy of the Bill, devolution analysis and Explanatory Notes for your review. I would be grateful if this is held in confidence until the Bill is introduced. An embargoed copy of the Bill has already been shared with officials.

The Bill implements the recommendations of the review of self-driving vehicle legislation carried out by the Law Commission of England and Wales and the Scottish Law Commission. This landmark review brings together over four years of legal work, three rounds of public consultation, and hundreds of responses from a wide range of organisations and individuals. A link to this work can be found here: [Automated Vehicles - Law Commission](#).

The Government's response to the recommendations was published in [Connected and Automated Mobility 2025: Realising the benefits of self-driving vehicles in the UK \(CAM 2025\)](#) in August 2022. Based on the Law Commissions' recommendations, CAM 2025 committed to set out a legal and safety framework to provide clarity of responsibility for self-driving vehicles and to put in place new safety requirements.

A summary of the Bill provisions is detailed in the Explanatory Notes, but measures will include, implementing a safety framework for self-driving vehicles, ensuring clear liability for self-driving vehicle companies and the users of these vehicles and protecting consumers.

The provisions of the Bill extend and apply to the whole of Great Britain, with the exception of the measures for digitalising Traffic Regulation Orders in clause 93 and some other minor exceptions, outlined in the devolution analysis. For the most part, the core clauses of the Bill relating to the regulation of automated vehicles come within the reserved road transport subject-matters in Head E1 of Schedule 5 to the Scotland Act 1998. However, UK Government is seeking legislative consent for the following specific provisions of the Bill:

- Clause 40: Power to require reports from police and local authorities (for the purposes of the regulatory scheme for automated vehicles in Part 1 of the text), as this modifies the executive competence of Scottish Ministers.
- Clauses 82-90 and Schedule 6: Automated Passenger Services (APS): Scottish and Welsh Ministers to issue APS permits for services provided in Scotland and Wales respectively if these are services resembling a taxi or private hire vehicle (PHV), alongside the Secretary of State issuing them in England.

It is the UK Government's view that only these clauses engage the legislative consent process. The UK Government remains fully committed to engaging with the Scottish Government and supporting your enquiries on the Bill.

I look forward to working with you as this Bill moves through parliamentary passage. I would be happy to discuss the content of the Bill further and invite you to reach out for a further discussion if this would be useful.

I would also be grateful if you could write, by the **20<sup>th</sup> November 2023**, to confirm whether you agree with this devolution analysis. Also, could you please indicate if you would be content to begin the legislative consent process and support a legislative consent motion in the Scottish Parliament. I am copying this letter to the Secretary of State for Scotland.

Yours ever,

A handwritten signature in black ink, appearing to read 'Jesse', written in a cursive style.

**RT HON JESSE NORMAN MP  
MINISTER OF STATE FOR TRANSPORT**

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19 October 2023

Dear Michael,

Thank you for hosting, along with Cllr Steele of the Comhairle nan Eilean Siar, the Islands Forum in Stornoway on 10 October. I enjoyed the event and the opportunity to meet with colleagues from across the UK to discuss the importance of digital and transport connectivity to our island communities and to undertake the interesting site visits.

I note you issued a press release about the Islands Forum on 11 October, however, I was disappointed to only hear about the press release indirectly from a journalist rather than having an opportunity to contribute to a joint release which would have been more in keeping with the nature of the Forum.

The press release suggests you proposed a 'task and finish' group to look at island transport connections and that this was agreed at the Forum but what you proposed at the meeting was a 'task and finish group on Fixed Links' although little had been discussed on fixed links.

I would urgently welcome more information on what you are now proposing to allow the Scottish Government, and I assume other Forum delegates, to consider further.

Yours sincerely,



**FIONA HYSLOP**



Department for Levelling Up,  
Housing & Communities

**Rt Hon Michael Gove MP**

*Secretary of State for Levelling Up, Housing &  
Communities*

*Minister for Intergovernmental Relations*

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Our reference: MC2023/01630

15th November 2023

Thank you for your letter of 19 October, and for joining the third Islands Forum held in Stornoway.

I found the conversations we had there useful and constructive, both in the main forum session and in the margins of the event. It was clear the huge value the Scottish Islands derive from our two governments working together, particularly on the vital topic of connectivity. There is an excellent foundation to start the work in the Task and Finish Group.

As we discussed at the Forum, some of the physical connectivity challenges facing the islands result from taking a piecemeal approach, so I am keen the Group takes an integrated and holistic view of the challenges. My officials will be in touch shortly with details of our further thinking, and to hear your views and those of the island councils. We will need to identify a workplan and timelines, and make sure we deliver meaningful progress ahead of the next forum in Spring 2024.

The focus of the next forum in Anglesey will be housing. I will also ask officials to be in touch with your officials and other counterparts regarding media at future forums, and am very happy to explore joint communications, if helpful.

Thank you again for your letter.

**RT HON MICHAEL GOVE MP**

Secretary of State for Levelling Up, Housing and Communities

Minister for Intergovernmental Relations



Department  
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 September 2023

Dear

*Fiorini*

It was good to meet with you, both individually and as part of the Inter-Ministerial Group (IMG), in the week commencing 11th September. I found our conversations constructive and feel they will provide a good platform going forward. As discussed at our meeting on 11th September, please see below further information on bus driver recruitment, Ukrainian driving licences and the Driver Medical call for evidence.

### **Bus driver recruitment**

I recognise there have been persistent driver shortages throughout the country and that this has likely impacted the sector's recovery from the pandemic as one of a number of factors. I am pleased therefore, that the latest intelligence from the sector suggests that the shortage has reduced in recent months, albeit from a high base. While it is largely for operators to focus on how they recruit and retain talent to make driving in the sector a fulfilling occupation, the Government has been assisting, where possible, with recruiting and retaining bus and coach drivers.

We have been engaging regularly with industry on this issue, and in November last year, worked with the Confederation of Passenger Transport (CPT) to host a Driver Shortages Summit to bring together experts from industry and national and local government to discuss this issue and identify a number of actions we can collectively take forward. Many of these are owned by industry, who as aforementioned, are responsible for recruiting drivers.

The industry has made good progress on their action. The CPT have recently published the first edition of their recruitment and retention best practice guide. It is intended that this will be periodically reviewed with members and updated. CPT and the Department for Work and Pensions are also working to pilot a new bus and coach driver focused recruitment programme. If successful, I will look into how this could be scaled up.

Similarly, we have made substantial progress to deliver the actions for Government, and the Department for Transport intend to launch a consultation shortly on amending licensing restrictions following requests from industry. This consultation will ask respondents for views on removing the 50km restriction on 18- to- 20-year-old bus and coach drivers driving a regular service and allowing prospective drivers to undertake the theory tests required to gain a Driver Certificate of Professional Competence prior to being granted a provisional bus licence.

We are also ensuring there is sufficient access to Passenger Carrying Vehicle (PCV) practical driving tests, whether through the bus and coach industry's network of delegated examiners, or directly through Driver and Vehicle Standards Agency (DVSA) test centres.

### **Ukrainian driving licences**

The Department for Transport has recently introduced legislation to extend the length of time that those issued a visa (entry clearance or permission to stay) under the Ukraine Visa schemes can drive in Great Britain on their Ukrainian driving licence, from one year to three, in a move that will help many continue going about their daily lives.

In making this decision, the Government carefully considered the need to ensure our roads remain as safe as possible and responses to a consultation on the proposal were overwhelmingly positive, with 99% agreeing there should be an extension and 89% agreeing with the proposed 3-year extension.

The new guidance on Ukrainian driving licences can be found here: Driving in Great Britain: Ukrainian driving licence exchange – GOV.UK (<https://www.gov.uk/guidance/driving-in-great-britain-ukrainian-driving-licence-exchange>)

### **Driver medical – call for evidence**

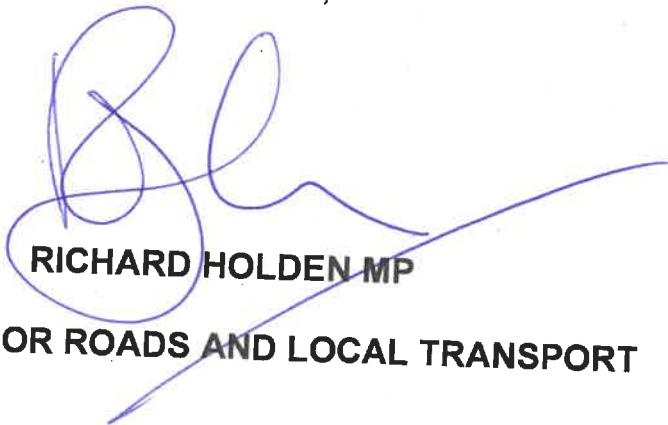
The safety of all road users is one of my key priorities. While many factors contribute to road safety, the health and fitness of drivers is a very important consideration. As the volume and complexity of driving licence applications or renewals where the applicant has one or more medical condition increases, the government believes that the time is right to review the existing legal framework. However, we recognise that there are many people and organisations with a wide range of expertise that might have views or ideas that they wish to share and that is why we are launching this call for evidence. We want to understand any opportunities for change in this area and we need your help with that.

I understand that my officials have shared the information regarding the Driver licensing for people with medical conditions: call for evidence which can be found alongside further information at this link: [Driver licensing for people with medical conditions: call for evidence - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/driver-licensing-for-people-with-medical-conditions)

The aim of this call for evidence is to tap into a wide range of experience, views, and research to help us to identify areas where policy or legislative changes may be able to improve outcomes for drivers and other road users. I would very much encourage you to respond.

I look forward to the next IMG meeting. In the meantime, I will ensure DfT officials continue to engage with Transport Scotland colleagues on these matters, the future IMG agenda items and any other areas of joint interest.

Best wishes,



**RICHARD HOLDEN MP**

**MINISTER FOR ROADS AND LOCAL TRANSPORT**





Department  
for Transport

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Our Ref: MC/435385

21 August 2023

Dear *Fiona*,

Thank you for your letter of 17 July outlining your concerns about accessing the UK Connectivity Delivery Fund (UCDF).

Firstly, please accept my sincere apologies for the delay in responding, which was due to an administrative error which we have now addressed.

I am grateful for the positive and collaborative relationship we have established both at official and ministerial levels on developing options to improve the A75 and I genuinely hope that this can be sustained in the future.

I would, however, like to take the opportunity to set out the summary of events that have led to the current challenges in reaching agreement on a feasibility project for the A75.

Following the UK Government's announcement of the UCDF in March 2021, officials in my department sought discussions with each of the devolved administrations to explore how we could work together and best utilise UCDF to support the development of shared priority transport connectivity schemes identified by Lord Hendy. This early and constructive engagement has already resulted in the UK Government providing funding for a feasibility study in Wales, which we jointly announced with the Welsh Government earlier this year and has resulted in significant progress in developing other schemes with both the Welsh Government and the Northern Ireland Department for Infrastructure.


My officials' attempts at engaging with their counterparts in the Scottish Government were initially delayed by Scottish parliamentary elections in May 2021 and the associated pre-election period and were subsequently declined by Transport Scotland, when my officials were led to believe that the Scottish Government ministers in post at the time did not wish to engage on the Union Connectivity Review or on the UCDF. It was not until January 2022 that our requests for engagement resulted in the commencement of meaningful discussions about the A75.

Whilst I appreciate your disappointment around the limitation of the UCDF to the current Spending Review period, I should point out that between March and June 2022, once meaningful discussions were underway, my officials clearly set out in writing to your officials the funding period for UCDF and the fact that future funding decisions beyond this SR period would need to be made at future spending reviews. It was at this point that my officials also clarified that, as with all UCDF funding, any proposal for the A75 would be considered by DfT and require the approval of HM Treasury. It was not until June 2023 that my Department received your proposal for the A75 which was not compliant with the funding period for UCDF that had previously been communicated.

Despite the misunderstandings that seem to have occurred, I am keen that we build on the collaborative relationship that we have developed thus far so that we can together develop improvements that will benefit the people of the UK. I welcome your suggestion of a meeting to discuss how we can move forward positively. My Private Office will be in touch with yours in due course.

Thank you, once again, for taking the time to write to me setting out your thoughts and I look forward to our continued collaboration on this important work.

Best wishes,



**RICHARD HOLDEN MP**

**MINISTER FOR ROADS AND LOCAL TRANSPORT**



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Fiona Hyslop MSP

6<sup>th</sup> October 2023

Dear

Fiona

### **The Prime Minister's announcement of Network North**

Thank you for taking the time to speak with me. I am writing to provide further clarity on some of the issues that we discussed.

Following our meeting on 11 September, I am pleased to be able to confirm our offer of £8m from the UK Connectivity Development Fund for the Scottish Government to take forward the study on improvements to the A75 around Springholm and Crocketford, subject to finalisation of the proposal and relevant approvals being obtained through the Business Case process. I understand that our officials are liaising on the remaining details. I am also pleased to confirm that this funding will be made available beyond the current Spending Review period.

In addition, as announced by the Prime Minister on 4 October, the UK Government has committed that, as part of Network North, we will provide funding for the delivery of targeted improvements, such as alleviating pinch points, on the A75. This future funding will be targeted at the delivery of the intervention(s) identified by the Springholm/Crocketford bypass study, subject to the Scottish Government's business cases at various stages throughout the process. I, and my officials, look forward to continuing to work closely with you and Transport Scotland as this important work progresses, including on delivery timescales, the available future funding envelope and funding arrangements for the scheme.

On HS2 and rail investments, we will now proceed with the steps necessary to take forward the decisions announced by the Prime Minister. This will involve working within the UK Government and with stakeholders to understand the impacts on areas such as indicative train service specifications for HS2 and released capacity on the West Coast Mainline, or the infrastructure needed to deliver a rescope HS2. This will also include

work to understand any required next steps for the legislative process. We will announce any further decisions in due course.

Best wishes,



**RICHARD HOLDEN MP**

**MINISTER FOR ROADS AND LOCAL TRANSPORT**



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11 October 2023

Dear Fiona

### **The Prime Minister's announcement of Network North**

Thank you for taking the time to speak last Wednesday. I appreciate your positive and pragmatic cooperation on transport connectivity matters between Scotland and England. I am writing to provide further clarity on some of the issues that we discussed.

Following our meeting, I am pleased to confirm our offer of £8m from the UK Connectivity Development Fund for the Scottish Government to take forward the study on improvements to the A75 around Springholm and Crocketford, subject to finalisation of the proposal and relevant approvals being obtained through the Business Case process. I understand that our officials are liaising on the remaining details. I am also pleased to confirm that this funding will be made available beyond the current Spending Review period.

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I am grateful for the continued collaborative engagement that we have nurtured between our departments and look forward to continuing to build on these strong foundations as we deliver for the people of the UK.

Best wishes,

A handwritten signature in blue ink, appearing to read 'R Holden', with a long, sweeping underline stroke extending to the right.

**RICHARD HOLDEN MP**

**MINISTER FOR ROADS AND LOCAL TRANSPORT**



Home Office

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Minister of State for Immigration

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DECS Reference: MIN/1027573/23

19 October 2023

Dear Fiona,

Thank you for your letter of 19 October to the Home Secretary about adding bus drivers to the Shortage Occupation List (SOL). I am replying as the Minister of State for Immigration.

Our skills-based immigration system enables us to treat people from every part of the world equally. We have broadened the eligibility of Skilled Worker visas from graduate jobs only to include jobs skilled to RQF level 3 (roughly equivalent to A-levels) and lowered the salary threshold to £26,200. Modelling by the independent Migration Advisory Committee (MAC) suggest the new, lower thresholds strike a reasonable balance between controlling immigration and business access to labour.

The SOL confers certain benefits, including lower application fees and reduced salary requirements, for skilled workers filling jobs which are in shortage. In their October 2023 review the MAC found the job of bus driver does not meet the RQF level 3 threshold, nor did they see a compelling reason to allow access to the immigration system. They found that there was no substantial reason for why domestic workers cannot fill the roles required. The MAC's SOL review can be found at:

<https://www.gov.uk/government/publications/review-of-the-shortage-occupation-list-2023>.

The UK Government is considering the MAC's review and will respond in due course.

Beyond the Skilled Worker Route, there is also the existing UK labour market, which includes UK workers, millions of EU workers who applied for the EU settlement scheme, those who come to the UK through our Youth Mobility Schemes, our new British National (Overseas) visa for those from Hong Kong, dependents of those arriving under the expanded Skilled Worker route, and those who arrive through other routes, such as our family visa one, who all have access to the UK labour market. People in routes such as these are free to work in the UK without being sponsored and are not subject to salary or skill requirements.

Questions on UK wide policy for the conversion of Ukrainian PCV and HGV licences should be directed to the Department for Transport.

Yours sincerely,

A handwritten signature in black ink that reads "Robert Jenrick". The signature is written in a cursive style with a horizontal line under the name.

**Rt Hon Robert Jenrick MP**  
**Minister of State for Immigration**