
STATUTORY INSTRUMENTS

2023 No. 1369

The Public Service Obligations in Transport Regulations 2023

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 whichever of regulations 13 to 20 is applicable.

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

(3) Where a public service contract could be awarded under more than one of regulations 15 to 20, the competent authority may award the contract in accordance with whichever of those regulations it considers appropriate.

(4) For the purpose of this regulation—

“services concession contract” means a contract in writing for the supply, for pecuniary interest, of public passenger transport services to a competent authority where—

- (a) at least part of the consideration for that supply is a right for the supplier to exploit the services, and
- (b) under the contract the public service operator is exposed to a real operating risk.

Provision of passenger transport services by a competent local authority

13.—(1) A competent local authority or a group of authorities providing integrated public passenger transport services may—

- (a) provide public passenger transport services itself, or
- (b) award a public service contract directly to an internal operator.

(2) For the purpose of determining whether an authority exercises control over a legally distinct person which is 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 person;
- (d) effective influence and control over strategic decisions and individual management decisions of the legally distinct person.

(3) An internal operator that has been awarded a public service contract under paragraph (1)(b) and any person over which that operator exerts any influence—

- (a) must perform their public passenger transport services within the geographical area of the competent local authority, notwithstanding any ancillary elements of that activity which enter the geographical area of neighbouring competent local authorities, and
 - (b) must not not take part in competitive tenders concerning the provision of public passenger transport services organised outside the geographical area of the competent local authority or authorities that control it.
- (4) Notwithstanding paragraph (3), an internal operator may participate in fair, competitive tenders, provided that—
- (a) there are 2 years or less of its directly awarded public service contract remaining,
 - (b) the competent authority has taken a final decision to submit the public passenger transport services covered by the internal operator’s contract to fair competitive tender, and
 - (c) the internal operator has not entered into any other directly awarded public service contract.
- (5) In the absence of a competent local authority, a competent authority with national competence may award a public service contract directly to an internal operator of that authority as if it were a competent local authority 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.
- (6) Where an internal operator is providing the public passenger transport services, that operator must perform the major part of the public passenger transport services itself.
- (7) In this regulation, “integrated public passenger transport services” means interconnected public passenger transport services within a particular geographical area with a single information service, ticketing scheme and timetable.

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) (internal operator exemption).
- (2) The procedure adopted for competitive tendering must be open to all suppliers, fair and transparent and accord with the applicable principles set out in regulation 4 (objectives).
- (3) In order to increase competition between railway suppliers, a competent authority may decide that contracts for public passenger transport services by rail relating to parts of the same network or package of routes are to be awarded to different railway suppliers and, if it does, it may decide to limit the number of contracts to be awarded to each railway supplier.
- (4) A competent authority must, while ensuring the protection of commercially sensitive information, 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.
- (5) Relevant information under paragraph (4) includes—
- (a) information on passenger demand, fares, costs and revenues related to the public passenger transport services covered by the competitive tendering procedure, and
 - (b) details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock.

Direct award of passenger services contracts under the de minimis exception

15.—(1) A competent authority may 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 300,000 kilometres of public passenger transport services or, in the case of a public service contract including public passenger transport services by rail, less than 500,000 kilometres.

(2) In the case of a public service contract not including public passenger transport services by rail, tramway or other track-based mode 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 600,000 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, a 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) A competent authority may make a direct award of a public service contract concerning transport by rail.

(2) Where a competent authority makes a direct award of a public service contract under this regulation, the competent authority must, within one year of granting the award, and while ensuring the protection of commercially sensitive information and commercial interests, publish a notice on its website which—

- (a) sets out the information specified in paragraph (3), or
 - (b) where any of the information in paragraph (3) has already been published (whether under regulation 23 or otherwise), provides details of where that information can be accessed.
- (3) The information referred to in paragraph (2) is—
- (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 any applicable rewards and penalties, and
 - (f) where there is an extended contract duration under regulation 9(2), a description of the assets to be provided by the operator which justify the award of a contract of a longer duration under that regulation.

Direct award of rail contracts in exceptional circumstances

18.—(1) Where it considers that it is justified by exceptional circumstances, a competent authority may, on a temporary basis, directly award a new public service contract for public passenger transport services by rail where the previous contract was 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 on its website, taking into consideration the protection of commercially sensitive information and commercial interests.

(4) While not exceeding the period specified in regulation 9(1)(c), the duration of a contract awarded pursuant to this regulation must also 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) A 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 include measurable, transparent and verifiable performance requirements in the contract.

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

- (a) punctuality of services,
- (b) frequency of services,
- (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) A competent authority that has awarded a contract under this regulation 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 to enforce a contract awarded under this regulation 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 on its website a contract awarded under this regulation, taking into consideration the 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) 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⁽¹⁾, a competent authority may award a public service contract for public passenger transport services by rail directly where it concerns only the operation of 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 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 1,
 - (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, either itself or when aggregated with any previous below-threshold modification or modifications, 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.

(1) [S.I. 2016/645](#), to which there have been amendments not relevant to these Regulations.

(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 1 (transfer on corporate restructuring), a competent authority may not modify a public service contract so as to change the operator.

(8) Regulations 12(1) (means of award of public service contracts), 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.