

**2015 No. 285**

**PUBLIC PASSENGER TRANSPORT**

**The Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015**

*Made* - - - - - *25th June 2015*

*Coming into operation* - - - - - *5th October 2015*

The Department for Regional Development<sup>(a)</sup> in exercise of the powers conferred by sections 1(9), 2(1), 2(3), 4(2), 4(3), 5(1), 8(2), 13(1) and (6), 14(2), 14(3), 14(4), 15 and 45(1), (2) and (7) of the Transport Act (Northern Ireland) 2011<sup>(b)</sup>, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Public Passenger Transport (Service Agreements and Service Permits) Regulations (Northern Ireland) 2015 and shall come into operation on 5th October 2015.

**Interpretation**

2. In these Regulations—

“the Act” means the Transport Act (Northern Ireland) 2011;

“operator” has the same meaning as in section 1 of the Act; and

“operator’s licence” has the same meaning as in section 1 of the Act.

**PART 1**

**SERVICE AGREEMENTS**

**Content of service agreements**

3.—(1) In addition to the mandatory requirements of Article 4 of Regulation (EC) No. 1370/2007<sup>(c)</sup>, a service agreement may deal with the matters set out in Schedule 1.

(2) A service agreement made with a company, or other body corporate, may apply also to the provision of services by any of its subsidiaries, provided that the subsidiary is an operator.

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(a) S.I. 1999/283

(b) 2011 c.11 (N.I.)

(c) OJ L 315, 3.12.2007, p1

## **Review of decisions required by Article 5(7) of Regulation (EC) No. 1370/2007**

4.—(1) The review procedure set out in Schedule 2 applies to decisions taken in accordance with paragraphs 2, 4, 5 and 6 of Article 5 of Regulation (EC) No. 1370/2007.

(2) The procedure set out in Schedule 3 applies to decisions taken in accordance with paragraph 3 of Article 5 of Regulation (EC) No. 1370/2007.

## **PART 2**

### **SERVICE PERMITS**

#### **Applications**

5.—(1) An application for a service permit must be made in writing to the Department and may be made by any form of electronic communication.

(2) The application fee set out in regulation 9 is payable at the time the application is submitted to the Department and may be paid by electronic transfer.

(3) An applicant for a service permit must provide such information as set out in Schedule 4.

(4) Where the Department decides to issue a service permit it will notify the applicant in writing of that decision.

(5) Where a decision has been issued under paragraph (4) –

(a) the applicant must submit the permit fee set out in regulation 9 to the Department within 42 calendar days of the date on the written notification, and may do so by electronic transfer; and

(b) on compliance by the applicant with subparagraph (a) the Department will issue the permit.

(6) Where the Department decides to refuse an application for a service permit it shall inform the applicant in writing of its reasons.

(7) For the purposes of this regulation, “electronic communication” has the same meaning as section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(a).

#### **Variation of service permits**

6. An application by the permit holder for the variation of a permit must be in writing and must include information as to—

(a) the detail of such variation;

(b) the reasons for the variation; and

(c) the date on which the service permit holder wishes the variation to take effect.

#### **Continuation of service permits on death, bankruptcy, etc.**

7.—(1) In this regulation, “actual holder” in relation to a service permit means the person to whom the service permit was issued.

(2) This regulation applies in the event –

(a) of the death of the actual holder of the service permit;

(b) of the actual holder of the service permit becoming a patient (within the meaning of Article 2(2) of the Mental Health (Northern Ireland) Order 1986(b) on the grounds that

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(a) 2001c.9 (N.I.), the definition of “electronic communication” in section 4(1) was amended by paragraph 170 of schedule 17 to the Communications Act 2003 (c.21)

(b) S.I. 1986/595 (N.I. 4)

the holder is incapable, by reason of mental disorder, of adequately managing his property and affairs;

- (c) that the actual holder has sold the business (or part of the business) as a going concern;
- (d) that the actual holder is adjudged bankrupt or is the subject of a bankruptcy restrictions order;
- (e) that the actual holder has become insolvent;
- (f) that the actual holder has received a winding up order;
- (g) that the actual holder has gone into receivership or liquidation; or
- (h) that the actual holder has entered into administration.

(3) Subject to paragraph (6), after the happening of any event mentioned in paragraph (2)(a) or (b), the Department may direct that the service permit be treated –

- (a) as not having terminated at the time when the service permit holder died or became a patient, but as having been suspended (that is, having remained in force but subject to the limitation that no services were authorised to be provided under it) from that time until the time when the direction comes into force; and
- (b) as having effect from the time when the direction comes into force for a specified period and as being held during the period (for such purposes and to such extent as may be specified) not by the person to whom it was issued, but by such other person carrying on that person's business, or part of that person's business.

(4) Subject to paragraph (6), after the happening of any of the events mentioned in paragraphs 1(c) to (h), the Department may direct that any service permit is to be treated (for such purposes, for such period and to such extent as may be specified) as held not by the person to whom it was issued, but by such other person carrying on that person's business, or part of that person's business.

(5) The Department may direct, for the purposes of giving effect to or supplementing a direction given under paragraphs (3) or (4), that the Act is to apply with such modifications in relation to the person who is to be treated under the direction as the holder of the service permit.

(6) The powers exercisable under paragraphs (3) and (4) shall be exercisable in relation to a service permit only where the person who is to carry on the business of the person to whom the service permit was issued, holds an operator's licence appropriate for that business.

(7) In this regulation "specified" means "specified in the direction".

### **Suspension or withdrawal of service**

**8.**—(1) A service permit holder who ceases to provide a service on a route provided for in that permit, must notify the Department in writing of that cessation, giving the reasons for it.

(2) The notification required under paragraph (1) must be given within 24 hours of the cessation or in the event of the service ceasing on a weekend, bank holiday or public holiday, on the next working day.

### **Fees**

**9.**—(1) Subject to paragraph (2), the fee payable in respect of an application for a service permit is £45, the issue of a service permit is £195 and the issue of a copy service permit, where the original has been lost or defaced, is £10.

(2) In respect of an application for a service permit for a service which is time-bound for a specific event, the fee payable for the application is £45, nil for issue of a service permit and for the issue of a copy where the original has been lost or defaced, the fee is £10.

### **Issue of copy permit**

**10.**—(1) Where a service permit has been lost or defaced, the service permit holder shall forthwith notify the Department in writing.

(2) If—

- (a) the Department is satisfied that the service permit has been lost or defaced; and
- (b) in the case of a service permit which has been defaced, it is surrendered to the Department,

the Department shall issue a copy (so marked) on payment of the fee, which shall have effect as the original service permit.

(3) Where a service permit has been lost, and after a copy has been issued, the lost service permit is found by or comes into possession of the service permit holder, the original service permit shall be returned to the Department.

### **Refunding fees**

**11.**—(1) Except where a service permit is revoked by the Department under section 10 of the Act, the fee for issue of a service permit, or a proportionate part as calculated in accordance with paragraph (2), shall be refunded upon receipt of a written request from the service permit holder to terminate the service or, in the case where the service permit holder has died, from the personal representative of that person.

(2) The amount refundable under paragraph 1 shall be £65 for each full year remaining on the service permit. The number of full years will be calculated from the date the Department receives the request.

## **PART 3**

### **PUBLIC PASSENGER TRANSPORT SERVICES**

#### **Exempt services**

**12.**—(1) A Tour provided by an operator is a service which is to be treated as an exempt service for the purposes of section 1(8) of the Act.

(2) A Tour means an occasional or scheduled advertised service for the purposes of tourism to advertised destinations within the United Kingdom where passengers may not be dropped off en route to each advertised destination, nor picked up on the return journey, and where the stopping time for each advertised destination shall not be less than twenty minutes.

Sealed with the Official Seal of the Department for Regional Development on 25th June 2015.



*Tom Reid*  
A senior officer of the  
Department for Regional Development

## SCHEDULE 1

Regulation 3(1)

### Matters that may be dealt with in a service agreement

1. The public passenger transport services to be provided, including details of routes and frequency of services.
2. Performance obligations.
3. Performance monitoring arrangements.
4. Variation provisions.
5. The general level and structure of fares.
6. Ticketing requirements.
7. Requirements for the subcontracting of services.
8. Audit provisions.
9. Asset ownership.
10. Reporting arrangements.
11. Duration.
12. Dispute resolution mechanisms.
13. The arrangements and mechanisms for the provision of information to passengers in respect of the disruption or amendment of services.
14. Technological requirements.
15. Consideration.
16. Type of ancillary service.
17. Incentives and penalties.

## SCHEDULE 2

Regulation 4(1)

### Review of decisions taken in accordance with paragraphs 2, 4, 5 and 6 of Article 5 of Regulation (EC) No. 1370/2007

**1.** Proceedings under this Schedule may be brought in the High Court by any person having or having had an interest in obtaining a particular public service contract and who has been or risks being harmed by an alleged infringement on the grounds that the decision has infringed European Union law.

**2.—(1)** Subject to subparagraph (2), such proceedings must be started within 30 days beginning with the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(2) Where the decision is published, subparagraph (1) does not require proceedings to be started before the end of a period of 10 days beginning with the day on which the decision is published.

(3) Subject to subparagraph (4), the Court may extend the time limit imposed by subparagraph (1) where it considers there is good reason for doing so.

(4) The Court must not exercise its power under subparagraph (3) so as to permit proceedings to be started more than 3 months after the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(5) For the purposes of this Schedule, proceedings are to be regarded as started when the originating process is issued.

**3.** Subject to paragraph 4, but otherwise without prejudice to any other powers of the Court in proceedings brought under this Schedule, the Court may—

(1) by interim order suspend the implementation of any decision;

(2) if satisfied that the decision infringed European Union law –

(a) order the setting aside of the decision or order the Department to amend any document;

(b) award damages to the person who has suffered loss or damage as a consequence of that infringement; or

(c) do both of these things.

**4.** In proceedings under this Schedule, the Court does not have the power to order any remedy other than an award of damages in respect of an infringement of European Union law if the public service contract in relation to which the infringement occurred has been entered into.

**5.** For the purposes of the Schedule, and notwithstanding section 39(2) of the Interpretation (Northern Ireland) Act 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

**6.** In this Schedule, “person” includes a body of persons corporate or unincorporated.

## SCHEDULE 3

Regulation 4(2)

### Decisions taken in accordance with paragraph 3 of Article 5 of Regulation (EC) No. 1370/2007

#### PART 1

##### Information about contract award procedures

###### **Award decision notice**

1. Subject to paragraph 8 the Department shall, as soon as possible after the decision under Article 5(3) of Regulation (EC) No. 1370/2007 has been made, inform the tenderers and the candidates of its decision to award the contract, and shall do so by notice in writing by the most rapid means of communication practicable.

2. Where it is to be sent to a tenderer, the notice referred to in paragraph 1 shall include –

(1) the criteria for the award of the contract;

(2) the reasons for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by –

(a) the person who is to receive the notice; and

(b) the person to be awarded the contract,

and anything required by paragraph 6.

(3) the name of the person to be awarded the contract; and

(4) a precise statement of either –

(a) when, in accordance with paragraphs 12 to 17 the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any and if so what contingencies; or

(b) the date before which the Department will not, in conformity with paragraphs 12 to 17, enter into the contract.

3. Where it is to be sent to a candidate, the notice referred to in paragraph 1 shall include –

(1) the reasons why the candidate was unsuccessful; and

(2) the information mentioned in paragraph 2, but as if the words “and relative advantages” were omitted from subparagraph (2).

4. Where the only tenderer is the one who is to be awarded the contract, and there are no candidates, the Department need not comply with paragraph 1.

###### **Reasons to be given on request**

5. Except to the extent that the Department has already informed the person whether by notice under paragraph 1 or otherwise), and subject to paragraph 8 the Department shall within 15 days of the date on which it receives a request in writing from any person who was unsuccessful –

(1) inform that person of the reasons why he was unsuccessful; and

(2) if the person submitted an admissible tender, the Department shall inform that person of the characteristics and relative advantages of the successful tender and the name of the person to be awarded the contract.

6. The reasons referred to in paragraph 2(2) and 5(1) shall include any reason for the Department's decision that the person did not meet the technical specifications required for the contract.

#### **Abandonment or recommencement of procedure**

7. Subject to paragraph 9 the Department shall, as soon as possible after the decision has been made, inform any candidates and tenderers of its decision to abandon or to recommence a contract award procedure in relation to the award of a contract.

8. Where the Department informs a person of its decision in accordance with paragraph 7 it shall
- (1) include the reasons for its decision; and
  - (2) provide the decision and reasons in writing if requested by the person.

#### **Grounds for withholding information**

9. The Department may withhold any information to be provided in accordance with paragraph 1, 2, 5, 6, 7 or 8 where the disclosure of such information –

- (a) would impede law enforcement;
- (b) would otherwise be contrary to the public interest;
- (c) would prejudice legitimate commercial interests; or
- (d) might prejudice fair competition.

#### **Definitions**

10. For the purposes of this Part –

(1) “candidate” means a person (other than a tenderer) who applied to be included amongst those to be selected to tender or to negotiate the contract, but does not include any person who has been informed of the rejection of his application, and the reasons for it; and

(2) “tenderer” means a person who submitted an offer and has not been definitively excluded.

11. For the purposes of paragraph 10(2) –

- (a) a tenderer has been excluded if his offer has been excluded from consideration; and
- (b) an exclusion is definitive if, and only if, the tenderer has been notified of the exclusion and either –
  - (i) the exclusion has been held to be lawful in proceedings under this Schedule; or
  - (ii) the time limit for starting such proceedings has expired even on the assumption that the Court would have granted the maximum extension permitted by paragraphs 19(4) and (5).

## **PART 2**

### **Standstill period**

12. The Department must not enter into the contract before the end of the standstill period.

13. Subject to paragraph 17, where the Department sends a paragraph 1 notice to all the relevant persons by facsimile or electronic means, the standstill period ends at midnight at the end of the 10<sup>th</sup> day after the relevant sending date.

14. Subject to paragraph 17, where the Department sends a paragraph 1 notice to all the relevant persons only by other means, the standstill period ends at whichever of the following occurs first –

- (1) midnight at the end of the 15<sup>th</sup> day after the relevant sending date;



(2) midnight at the end of the 10<sup>th</sup> day after the date on which the last of the persons to receive such a notice receives it.

**15.** In paragraphs 13 and 14, “the relevant sending date” means the date on which the paragraph 1 notices are sent to the relevant persons, and if the notices are sent to different relevant persons on different dates, the relevant sending date is the date on which the last of the notices is sent.

**16.** Subject to paragraph 17, where the Department sends a paragraph 1 notice to one or more of the relevant persons by facsimile or electronic means and to the others by other means, the standstill period ends at whichever of the following two times occurs latest –

(1) midnight at the end of the 10<sup>th</sup> day after the date on which the last notice is sent by facsimile or electronic means;

(2) the time when whichever of the following occurs first –

(a) midnight at the end of the 15<sup>th</sup> day after the date on which the last notice is sent by facsimile or electronic means;

(b) midnight at the end of the 10<sup>th</sup> day after the date on which the last of the persons to receive a notice sent by any such other means receives it.

**17.** Where the last day of the standstill period reckoned in accordance with paragraphs 13 to 16 is not a working day, the standstill period is extended to midnight at the end of the next working day.

## PART 3

### Applications to the Court

**18.** Proceedings under this Part may be brought in the High Court by any person having or having had an interest in obtaining a particular public service contract and who has been or risks being harmed by an alleged infringement on the grounds that the decision has infringed European Union law.

#### **General time limits for starting proceedings**

**19.—**(1) This paragraph limits the time within which proceedings may be started.

(2) Subject to subparagraphs (3) to (5) such proceedings must be started within 30 days beginning with the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(3) Subparagraph (2) does not require proceedings to be started before the end of any of the following periods –

(a) where the proceedings relate to a decision which is sent to the person by facsimile or electronic means, 10 days beginning with –

(i) the day after the date on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;

(ii) if the decision is not so accompanied, the day after the date on which the person is informed of a summary of those reasons.

(b) where the proceedings relate to a decision which is sent to the person by other means, whichever of the following periods ends first –

(i) 15 days beginning with the day after the day on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;

(ii) 10 days beginning with –

(aa) the day after the date on which the decision is received, if the decision is accompanied by a summary of the reasons for the decision; or

- (bb) if the decision is not so accompanied, the day after the date on which the person is informed of a summary of those reasons;
  - (c) where heads (a) and (b) do not apply but the decision is published, 10 days beginning with the day on which the decision is published.
- (4) Subject to subparagraph (5) the Court may extend the time limit imposed by subparagraph (2) where the Court considers that there is a good reason for doing so.
- (5) The Court must not exercise its power under subparagraph (4) so as to permit proceedings to be started more than 3 months after the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.
- (6) For the purposes of this Part, proceedings are to be regarded as started when the originating process is issued.

### **Starting proceedings**

**20.**—(1) Where proceedings are started by a person he must serve the originating process on the Department within 7 days after the date of issue.

(2) Subparagraph (3) applies where proceedings are started alleging a breach of a requirement or suspension imposed by or under paragraph 21 or paragraph 22 where the contract has not been fully performed.

(3) In those circumstances the person must, as soon as practicable, send a copy of the originating process to any other person who is a party to the contract in question.

(4) The Department must, as soon as is practicable, comply with any request from the person who has started the proceedings for any information that he may reasonably require for the purpose of complying with subparagraph (3).

(5) In this paragraph “serve” means serve in accordance with rules of court and for the purposes of this paragraph an originating process is deemed to be served on the day on which it is deemed by rules of court to be served.

### **Contract-making suspended by challenge to award decision**

**21.**—(1) Where –

- (a) an originating process is issued in respect of the Department’s decision to award the contract;
- (b) the Department has become aware that the originating process has been issued and that it relates to that decision; and
- (c) the contract has not been entered into,

the Department is required to refrain from entering into the contract.

(2) The requirement continues until any of the following occurs –

- (a) the Court brings the requirement to an end by interim order under paragraph 22(1)(a);
- (b) the proceedings at first instance are determined, discontinued or otherwise disposed of and no order has been made continuing the requirement (for example in connection with an appeal or the possibility of an appeal).

### **Interim orders**

**22.**—(1) In proceedings the Court may, where relevant, make an interim order –

- (a) bringing to an end the requirement imposed by paragraph 21(1);
- (b) restoring or modifying that requirement;
- (c) suspending the procedure leading to the award of the contract;
- (d) suspending the implementation of any decision or action taken by the Department in the course of following such a procedure.

- (2) When deciding whether to make an order under subparagraph (1)(a) –
- (a) the Court must consider whether, if paragraph 21(1) were not applicable, it would be appropriate to make an interim order requiring the Department to refrain from entering into the contract; and
  - (b) only if the Court considers that it would not be appropriate to make such an interim order may it make an order under subparagraph (1)(a).
- (3) If the Court considers that it would not be appropriate to make an interim order of the kind mentioned in subparagraph (2)(a) in the absence of undertakings or conditions, it may require or impose such undertakings or conditions in relation to the requirement in paragraph 21(1).
- (4) This paragraph does not prejudice any other powers of the Court.

#### **Remedies where the contract has not been entered into**

**23.**—(1) This paragraph applies where the Court is satisfied that a decision taken by the Department infringed European Union law and the contract has not yet been entered into.

- (2) In those circumstances the Court may do one or more of the following –
- (a) order the setting aside of the decision concerned;
  - (b) order the Department to amend any document;
  - (c) award damages to a person who has suffered loss and damage as a result of the infringement.
- (3) This paragraph does not prejudice any other powers of the Court.

#### **Remedies where the contract has been entered into**

**24.**—(1) Subparagraph (2) applies if the Court is satisfied that a decision taken by the Department infringed European Union law and the contract has already been entered into.

- (2) In those circumstances the Court –
- (a) may award damages to the person who has suffered loss or damage as a consequence of the infringement;
  - (b) must not order any other remedies.

#### **Injunction against the Department**

**25.** In proceedings against the Department the Court has power to grant an injunction despite section 21 of the Crown Proceedings Act 1947.

#### **Interpretation of Schedule**

- 26.**—(1) In this Schedule –
- (a) “person” includes a body of persons corporate or unincorporated;
  - (b) “paragraph 1 notice” means a notice given in accordance with paragraph 1 of Part 1; and
  - (c) “relevant persons” means persons to whom paragraph 1 of Part 1 requires information to be given.
- (2) For the purposes of this Schedule and notwithstanding section 39(2) of the Interpretation (Northern Ireland) Act 1954 where a period of time is expressed to begin on, or to be reckoned from a particular day, that day shall be included in the period.

## SCHEDULE 4

Regulation 5(3)

### Service Permit Applications

Information to be provided by an applicant

- 1.** Particulars of the proposed route, timetable, frequency of service, target market, start date, fare structure and fare levels.
- 2.** The applicant's operator licence number or, where the applicant has applied for an operator's licence and that application is still outstanding, the date upon which the application for an operator's licence was submitted to the Department of the Environment.
- 3.** The applicant's full name, position within the company, trading name (if applicable), business address, business telephone number and business e-mail address (if available).
- 4.** Particulars of seating capacity, accessibility features and proposed overnight location of each vehicle to be used to provide the service.
- 5.** Customer care policies and procedures, including particulars of staff training provision and any customer feedback procedures.
- 6.** Particulars of any sub-contracting arrangement with any other operator in respect of the services to be provided under the service permit application.
- 7.** Documentary evidence of demand for the service.
- 8.** Particulars as to how the service will be publicised and what customer information will be provided.
- 9.** Contingency arrangements in the event of vehicle breakdown.

## **EXPLANATORY NOTE**

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

These Regulations lay down the rules for Part 1 of the Transport Act (Northern Ireland) 2011 (“the Act”) in relation to the provision of public passenger transport services and do so in accordance with the requirements of Commission Regulation (EC) No. 1370/2007 on public passenger transport services by rail and road.

The Regulations provide arrangements for the introduction of service agreements for the provision of public passenger transport services or services ancillary to public passenger transport services, ensuring compliance with Regulation (EC) No. 1370/2007.

The Regulations also provide arrangements for a service permit system which has been designed to complement public passenger transport services provided under service agreements.

Regulation 3 and Schedule 1 set out what may be dealt with in a service agreement.

Regulation 4(1) and Schedule 2 put in place the review provisions for service agreements which are directly awarded.

Regulation 4(2) and Schedule 3 put in place the review provisions for competitively tendered contracts.

Regulations 5 to 11 and Schedule 4 set out the necessary requirements for the implementation of the service permit system, put in place by the Act, which is designed to allow for public passenger transport services to be provided alongside those provided under a service agreement, as described in regulation 3.

Regulation 12 sets out the category of service which is to be treated as exempt from the service permit system.