



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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

DATE **14 March 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

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

The Law which is being amended:

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

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

My statement on 25 January regarding the **State Aid (EU Exit) Regulations 2019** set out the Welsh Government's view that State aid is a devolved matter and not a reserved matter under Schedule 7A of the Government of Wales Act 2006. The UK Government does not consider it as such, and therefore did not request the consent of the Welsh Ministers consent under the terms of the Intergovernmental Agreement for the **State Aid (EU Exit) Regulations 2019**.

The **Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2019** are affected by our position on State aid. Regulation 1370/2007 sets out the conditions under which operators of public service obligations (PSOs) are to be compensated for the costs they incur as a result of carrying out public service obligations. Regulation 1370 provides for a sectoral exemption from the general State aid rules (for public passenger transport services by rail and road), releasing competent authorities from the need to acquire prior

State aid approval from the Commission in each case where a public service operator is compensated, provided that any compensation complies with the requirements of Regulation 1370/2007.

The purpose of the amendments

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 (“Regulation 1370/2007”) contains a number of provisions which would be deficient when the Regulation becomes retained EU law following the United Kingdom’s departure from the European Union.

The purpose of these amendments is to correct these deficiencies. The instrument also includes transitional provisions and savings provisions to ensure the legislation operates effectively after exit day.

The SI and accompanying Explanatory Memorandum, setting out the effect of the SI, are available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-regulation-ec-no-1370-2007-public-service-obligations-amendment-eu-exit-regulations-2019>

Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument provides for the saving of Article 5 of Regulation 1370/2007 using the powers in section 23(6) of and paragraph 23(3) of Schedule 7 to the EU (Withdrawal) Act 2018. It then provides for Article 5 to be “retained EU law” along with the rest of the Regulation, using the power in paragraph 23(5) of Schedule 7.

Article 5 provides a limited power to directly award franchises without the need for a full procurement competition, a sector-specific provision reflecting the need to secure the continuity of public transport, including in urgent situations. However, the interplay between the wording of Article 8 of Regulation 1370/2007 (as recently amended by Regulation (EU) 2016/2338) and section 3(3) of the EU (Withdrawal) Act 2018 means that Article 5 will not be retained EU law under section 3 of the EU (Withdrawal) Act 2018.

Section 3 of the EU (Withdrawal) Act 2018 incorporates direct EU legislation so far as it was “operative” immediately before exit day. Until 24th December 2017, Article 5 was “operative” within the meaning of the EU (Withdrawal) Act 2018, but Member states were not obliged to comply fully with its terms until 3rd December 2019. However, the amendment to Regulation 1370/2007 that came into force on 24 December 2017 changed the wording of the relevant transitional provision in Article 8(2), providing that Article 5 shall only “apply” from 3rd December 2019. Article 5 will not therefore be “operative” within the meaning of section 3 of the EU Withdrawal Act on exit day.

However, Article 8(2) continues to impose the obligation on competent authorities to gradually comply with Article 5, and that “operative” provision will be retained into domestic law on exit day. This leaves a gap in the legislation creating legal

uncertainty, since competent authorities will be required to work towards requirements that are missing from the legislation. Therefore, it is considered appropriate to save Article 5 to ensure that Regulation 1370/2007 continues to operate effectively and to remove this uncertainty. As noted above, this is done by saving Article 5 as “retained EU law” under section 23(6) of and paragraph 23(3) and (5) of Schedule 7 to the EU Withdrawal Act.

The instrument accordingly also corrects technical deficiencies in Article 5 (as retained EU law) under section 8(1).

Why consent was given

There is no policy divergence between the Welsh Government and the UK Government on the policy for the amendments and the the substance of the amendments are not considered politically sensitive.

However, there are substantial concerns with the approach being adopted by the UK Government in respect of the **State Aid (EU Exit) Regulations 2019**, as well as connected statutory instruments, including the **Regulation (EC) No 1370/2007 (Public Service Obligations In Transport) (Amendment) (EU Exit) Regulations 2019**.

Nevertheless, we recognise the need to ensure that the statute book is operable on exit day and acknowledge that the corrections to legislation underpinning the rail franchising regime established by this SI are vital to the continuation of rail services across the UK.

Furthermore, there is ongoing engagement with officials of the Department for Business, Energy and Industrial Strategy in developing a Memorandum of Understanding for the operation of a UK wide State aid regime.

It is, however, clear to us that the impending deadlines limit the scope for negotiation around this complex point, which has remained unresolved for many years. We are therefore taking a pragmatic approach in order to protect citizens, and grant consent to the SI on the basis that there is no policy divergence and that our concerns will be addressed, though this is without prejudice to our position on legislative competence in respect of State aid.