



Railways Act 1993

1993 CHAPTER 43

PART I

THE PROVISION OF RAILWAY SERVICES

Franchising of passenger services

23 Passenger services to be subject to franchise agreements

- (1) It shall be the duty of the Franchising Director from time to time to designate as eligible for provision under franchise agreements such services for the carriage of passengers by railway as he may determine (other than services which are, by virtue of section 24 below, exempt from designation under this subsection).
- (2) The Franchising Director may perform his duty under subsection (1) above by designating particular services or services of a class or description.
- (3) In this Part—

“franchise agreement” means an agreement with the Franchising Director under which another party undertakes either—

(a) to provide, or

(b) to secure that a wholly owned subsidiary of his provides,

throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

“franchise operator”, in relation to any franchise agreement, means the person (whether the franchisee or, as the case may be, the wholly owned subsidiary of the franchisee) who is to provide the franchised services;

“franchise period”, in relation to any franchise agreement, means the franchise term, except where the franchise agreement is terminated before the end of that term, in which case it means so much of that term as ends with that termination;

“franchise term”, in relation to any franchise agreement, means the period specified in the franchise agreement as the period throughout which the

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franchisee is to provide, or secure that a wholly owned subsidiary of his provides, the franchised services, and includes any such extension of that period as is mentioned in section 29(3) below;

“franchised services”, in relation to any franchise agreement, means the services for the carriage of passengers by railway which are to be provided under that franchise agreement;

“franchisee” means—

- (a) in relation to a franchise agreement under which a party undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the party so undertaking; or
 - (b) in relation to any other franchise agreement, the person who is to provide the franchised services.
- (4) Any reference in this Part to the provision of services under a franchise agreement is a reference to the provision of those services by the franchise operator; and where the franchise operator is, or is to be, a wholly owned subsidiary of the franchisee, any reference to the provision of services by the franchisee under a franchise agreement shall accordingly be construed as a reference to his securing their provision by the franchise operator.

24 Exemption of passenger services from section 23(1)

- (1) The Secretary of State may by order grant exemption from designation under section 23(1) above in respect of such services for the carriage of passengers by railway as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.
- (2) A franchise exemption under subsection (1) above may be granted—
 - (a) to persons of a particular class or description or to a particular person; and
 - (b) in respect of services generally, services of a particular class or description or a particular service, or in respect of part only of any such services or service;
 and a franchise exemption granted to persons of a particular class or description shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class or description.
- (3) If a person who provides, or who proposes to introduce, services for the carriage of passengers by railway makes an application to the Secretary of State under this subsection for the grant of an exemption from designation under section 23(1) above in respect of any such service which he provides or proposes to introduce, the Secretary of State, after consultation with the Regulator and the Franchising Director—
 - (a) may either grant or refuse the exemption, whether wholly or to such extent as he may specify in the exemption; and
 - (b) if and to the extent that he grants it, may do so subject to compliance with such conditions (if any) as he may so specify.
- (4) Before granting a franchise exemption under subsection (3) above, the Secretary of State shall give notice—
 - (a) stating that he proposes to grant the franchise exemption,
 - (b) stating the reasons why he proposes to grant the franchise exemption, and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed franchise exemption may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (5) A notice under subsection (4) above shall be given by publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the franchise exemption.
- (6) If any condition (the “broken condition”) of a franchise exemption is not complied with, the Secretary of State may give to any relevant person a direction declaring that the franchise exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.
- (7) For the purposes of subsection (6) above—
 - “condition”, in relation to a franchise exemption, means any condition subject to compliance with which the franchise exemption was granted;
 - “relevant person”, in the case of any franchise exemption, means a person who has the benefit of the franchise exemption and who—
 - (a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or
 - (b) provides any of the services in relation to which the broken condition is not complied with.
- (8) Subject to subsection (6) above, a franchise exemption, unless previously revoked in accordance with any term contained in the franchise exemption, shall continue in force for such period as may be specified in, or determined by or under, the franchise exemption.
- (9) Any application for a franchise exemption under subsection (3) above must be made in writing; and where any such application is made, the Secretary of State may require the applicant to furnish him with such information as the Secretary of State may consider necessary to enable him to decide whether to grant or refuse the franchise exemption.
- (10) Any franchise exemption granted under subsection (3) above shall be in writing.
- (11) Subsections (1) and (3) above apply in relation to the grant of a franchise exemption whether it is to become effective on, or after, the day on which section 23(1) above comes into force.
- (12) Franchise exemptions may make different provision for different cases.
- (13) In this Part, “franchise exemption” means an exemption from designation under section 23(1) above granted under any provision of this section in respect of any service for the carriage of passengers by railway.

25 Public sector operators not to be franchisees

- (1) The following bodies and persons (in this Part referred to as “public sector operators”) shall not be franchisees—
 - (a) any Minister of the Crown, Government department or other emanation of the Crown;
 - (b) any local authority;
 - (c) any metropolitan county passenger transport authority;
 - (d) any body corporate whose members are appointed by a Minister of the Crown, a Government department, a local authority or a metropolitan county

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passenger transport authority or by a body corporate whose members are so appointed;

- (e) a company—
 - (i) a majority of whose issued shares are held by or on behalf of any of the bodies or persons falling within paragraphs (a) to (d) above;
 - (ii) in which the majority of the voting rights are held by or on behalf of any of those bodies or persons;
 - (iii) a majority of whose board of directors can be appointed or removed by any of those bodies or persons; or
 - (iv) in which the majority of the voting rights are controlled by any of those bodies or persons, pursuant to an agreement with other persons;
 - (f) a subsidiary of a company falling within paragraph (e) above.
- (2) Expressions used in sub-paragraphs (i) to (iv) of subsection (1)(e) above and in section 736 of the Companies Act 1985 have the same meaning in those sub-paragraphs as they have in that section.
- (3) Subject to the following provisions of this section, subsection (1) above shall not prevent—
- (a) the British Railways Board (in this Act referred to as “the Board”), or
 - (b) a wholly owned subsidiary of the Board,
- from being a franchisee.
- (4) Subject to the following provisions of this section, whenever the Franchising Director proposes to issue invitations to tender under section 26 below in respect of any particular services for the carriage of passengers by railway, he may, after consultation with the Board and the Regulator, determine that neither the Board nor any wholly owned subsidiary of the Board shall be eligible for inclusion among the persons to whom the invitations are to be issued or who may be selected as the franchisee.
- (5) The Franchising Director shall not make a determination under subsection (4) above unless he considers that it is desirable to do so—
- (a) for the purpose of promoting competition for franchises;
 - (b) for the purpose of promoting the award of franchise agreements to companies in which qualifying railway employees have a substantial interest;
 - (c) for the purpose of encouraging new entry to the passenger railway industry; or
 - (d) for the purpose of preventing or reducing the dominance of any person or persons in the market for the provision in Great Britain, or in a part of Great Britain, of services for the carriage of passengers by railway.
- (6) The Franchising Director shall—
- (a) give notice of any determination under subsection (4) above to the Board; and
 - (b) publish notice of the determination in such manner as he thinks fit.
- (7) Nothing in subsection (5) above shall be taken to affect the matters which the Franchising Director may take into account in determining the other persons whom he invites to tender for franchise agreements or whom he selects as franchisees.
- (8) No objectives, instructions or guidance shall be given under section 5 above by the Secretary of State to the Franchising Director with respect to the exercise of his functions under this section.
- (9) In this section—

“competition for franchises” means competition to become franchisees under franchise agreements;

“encouraging new entry to the passenger railway industry” means encouraging private sector operators who do not currently provide services for the carriage of passengers by railway to commence doing so;

“qualifying railway employees”, in the case of any franchise agreement, means persons who are or have been employed in an undertaking which provides or provided the services to which the franchise agreement relates at a time before those services begin to be provided under that franchise agreement.

26 Invitations to tender for franchises

- (1) Unless the Secretary of State otherwise directs, the person who is to be the franchisee under any franchise agreement shall be selected by the Franchising Director from among those who submit tenders in response to an invitation to tender under this section for the right to provide, or to secure that a wholly owned subsidiary provides, services for the carriage of passengers by railway under that franchise agreement.
- (2) The Franchising Director shall prepare any such invitation to tender and shall issue that invitation to such persons as he may, after consultation with the Regulator, think fit.
- (3) The Franchising Director shall not issue an invitation to tender under this section to (or entertain such a tender from) any person unless he is of the opinion that the person has, or is likely by the commencement of the franchise term to have, an appropriate financial position and managerial competence, and is otherwise a suitable person, to be the franchisee.

27 Transfer of franchise assets and shares

- (1) It shall be the duty of the Franchising Director before entering into a franchise agreement to satisfy himself that if the franchise agreement is entered into—
 - (a) the initial franchise assets (if any) for that franchise agreement will be vested in the person who is to be the franchise operator; and
 - (b) if the franchise agreement is to be one under which the franchisee undertakes to secure that a wholly owned subsidiary of his provides the franchised services, that the franchise operator will be a wholly owned subsidiary of the franchisee.
- (2) After a franchise agreement has been entered into, it shall be the duty of the Franchising Director, before any property, rights or liabilities are subsequently designated as franchise assets in accordance with the terms of, or by amendment to, the franchise agreement, to satisfy himself that, if the property, rights or liabilities in question are so designated, they will be vested in the franchise operator.
- (3) Without the consent of the Franchising Director, the franchise operator shall not—
 - (a) if and to the extent that the franchise assets are property or rights—
 - (i) transfer or agree to transfer, or create or agree to create any security over, any franchise assets or any interest in, or right over, any franchise assets; or
 - (ii) create or extinguish, or agree to create or extinguish, any interest in, or right over, any franchise assets; and

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- (b) if and to the extent that the franchise assets are liabilities, shall not enter into any agreement under which any such liability is released or discharged, or transferred to some other person.
- (4) Where the franchise agreement is one under which the franchisee undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the franchisee shall not, without the consent of the Franchising Director, take any action which would result in the franchise operator ceasing to be a wholly owned subsidiary of his.
- (5) Any transaction which is entered into in contravention of subsection (3) or (4) above shall be void.
- (6) In England and Wales, no execution or other legal process may be commenced or continued, and no distress may be levied, against any property which is, or rights which are, franchise assets in the case of any franchise agreement.
- (7) In Scotland, no diligence or other legal process may be carried out or continued against any property which is, or rights which are, franchise assets in the case of any franchise agreement.
- (8) In any case where—
- (a) there are to be initial franchise assets in relation to a franchise agreement,
 - (b) a franchise agreement is to be one which provides for subsequent designation of property, rights or liabilities as franchise assets, or
 - (c) property, rights or liabilities are to be designated as franchise assets by an amendment made to a franchise agreement,
- the Franchising Director shall ensure that the franchise agreement includes provision specifying, or providing for the determination of, amounts to be paid in respect of the property, rights and liabilities which, immediately before the end of the franchise period, constitute the franchise assets in relation to that franchise agreement if and to the extent that they are transferred by transfer scheme at or after the end of that period.
- (9) Without prejudice to the generality of the provisions that may be included in a franchise agreement with respect to the acquisition, provision, disposal or other transfer of property, rights or liabilities (whether franchise assets or not), the Franchising Director may undertake in a franchise agreement to exercise his powers under Part II below to transfer franchise assets to himself or another in such circumstances as may be specified in the franchise agreement.
- (10) The Franchising Director shall ensure that every franchise agreement includes such provision (if any) as he may consider appropriate in the particular case for the purpose of securing—
- (a) that the franchise assets are adequately maintained, protected and preserved; and
 - (b) that, at the end of the franchise period, possession of such of the franchise assets as may be specified for the purpose in the agreement, or by the Franchising Director in accordance with the agreement, is delivered up to the Franchising Director or such other person as may be so specified.
- (11) In this Part, “franchise assets”, in relation to any franchise agreement, means—
- (a) any property, rights or liabilities which are designated as franchise assets in the franchise agreement as originally made (in this section referred to as the “initial franchise assets”), and

- (b) any property, rights or liabilities which, after the making of the franchise agreement, are designated as franchise assets in accordance with the terms of, or by an amendment made to, the franchise agreement,
but does not include any property, rights or liabilities which, in accordance with the terms of, or by an amendment made to, the franchise agreement, have for the time being ceased to be designated as franchise assets.
- (12) No rights or liabilities under contracts of employment shall be designated as franchise assets.
- (13) In this section “security” has the meaning given by section 248(b) of the Insolvency Act 1986.
- (14) Any sums required by the Franchising Director for making payments for or in connection with the acquisition, transfer or disposal of property, rights or liabilities in pursuance of provisions contained in a franchise agreement shall be paid by the Secretary of State out of money provided by Parliament.
- (15) Any sums received by the Franchising Director for or in connection with the acquisition, transfer or disposal of property, rights or liabilities in pursuance of provisions contained in a franchise agreement shall be paid into the Consolidated Fund.

28 Fares and approved discount fare schemes

- (1) A franchise agreement may include provision with respect to the fares to be charged for travel by means of the franchised services.
- (2) Subject to the other provisions of this Act, if it appears to the Franchising Director that the interests of persons who use, or who are likely to use, franchised services so require, he shall ensure that the franchise agreement in question contains any such provision as he may consider necessary for the purpose of securing that any fares, or any fares of a class or description, which are to be charged are, in his opinion, reasonable in all the circumstances of the case.
- (3) Every franchise agreement shall include provision requiring the franchise operator—
- (a) to participate in every approved discount fare scheme,
 - (b) to charge fares, in cases to which such a scheme applies, at rates which are not in excess of the levels or, as the case may be, the maximum levels set by the scheme, and
 - (c) otherwise to comply with the requirements of every such scheme,
- if and to the extent that the franchised services are services, or services of a class or description, in relation to which the approved discount fare scheme in question applies.
- (4) The discount fare schemes which are to be regarded for the purposes of this section as “approved” are those which are from time to time approved for the purposes of this section by the Franchising Director.
- (5) In this section—
- “discount fare scheme” means any scheme for enabling persons who are young, elderly or disabled to travel by railway at discounted fares, subject to compliance with such conditions (if any) as may be imposed by or under the scheme;

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“discounted fare” means a lower fare than the standard fare for the journey in question;

“scheme” includes any agreement or arrangements.

29 Other terms and conditions of franchise agreements

- (1) The Franchising Director may enter into a franchise agreement on conditions requiring—
 - (a) the rendering to the Franchising Director by the franchisee or the franchise operator of payments of such amounts and at such intervals as may be specified in, or determined by or under, the franchise agreement; or
 - (b) the payment to the franchisee or the franchise operator of grants of such amounts and at such intervals as may be specified in, or determined by or under, the franchise agreement.
- (2) A franchise agreement may include provision requiring the franchisee—
 - (a) to operate any additional railway asset; or
 - (b) to secure the operation of any additional railway asset by the franchise operator or any other wholly owned subsidiary of the franchisee.
- (3) A franchise agreement shall include provision specifying the franchise term and may include provision enabling that term to be extended by such further term as may be specified in the franchise agreement.
- (4) Without prejudice to the generality of the provisions relating to property, rights and liabilities that may be included in a franchise agreement, a franchise agreement may include provision requiring the franchise operator—
 - (a) to acquire from such person as may be specified in the franchise agreement, and to use, such property or rights as may be so specified; or
 - (b) to undertake such liabilities as may be so specified.
- (5) Subject to any requirements imposed by or under this Act, a franchise agreement may contain any such provisions as the Franchising Director may think fit.
- (6) Any sums received by the Franchising Director in consequence of the conditions of a franchise agreement shall be paid into the Consolidated Fund.
- (7) Any sums required by the Franchising Director for the payment of any grant, or for the making of any other payment, in consequence of any condition or other provision of a franchise agreement shall be paid by the Secretary of State out of money provided by Parliament.
- (8) In this Part, “additional railway asset” means any network, station or light maintenance depot, and any reference to an additional railway asset includes a reference to any part of an additional railway asset.

30 Failure to secure subsequent franchise agreement

- (1) In any case where—
 - (a) a franchise agreement is terminated or otherwise comes to an end, but
 - (b) no further franchise agreement has been entered into in respect of services for the carriage of passengers by railway formerly provided under that franchise agreement,

it shall, subject to subsection (3) below, be the duty of the Franchising Director to secure the provision of those services until such time as they again begin to be provided under a franchise agreement.

(2) In any case where a franchise agreement which includes provision in respect of the operation of any additional railway assets is terminated or otherwise comes to an end, but—

- (a) no further franchise agreement has been entered into which makes provision in respect of the operation of the additional railway assets formerly operated under or by virtue of that franchise agreement, or
- (b) such further franchise agreement as has been entered into in respect of the operation of those additional railway assets makes provision in respect of the operation of some but not all of those additional railway assets,

the Franchising Director shall, subject to subsection (4) below, have the power to secure the operation of any additional railway asset with respect to the operation of which no further franchise agreement has been entered into, until such time as it again begins to be operated under or by virtue of a franchise agreement.

(3) Subsection (1) above does not—

- (a) require the Franchising Director to secure the provision of any services, if and to the extent that, in his opinion, adequate alternative railway passenger services are available;
- (b) preclude him from giving notice under subsection (5) of section 38 below in relation to any of the services in question, in which case his duty under this section to secure the provision of the services to which the notice relates will (subject to subsections (5) and (6) of that section) terminate on the day specified in the notice in pursuance of paragraph (b) of that subsection; or
- (c) preclude him from ceasing to secure the provision of any of the services in question in any case falling within any of paragraphs (a) to (d) of subsection (2) of that section.

(4) The Franchising Director's power under subsection (2) above to secure the operation of any additional railway asset shall come to an end—

- (a) where the Franchising Director publishes a notice under subsection (5) of section 40 or subsection (4) of section 42 below in respect of the additional railway asset in question, on the date mentioned in paragraph (b) of the subsection in question;
- (b) where the Franchising Director discontinues the operation of the additional railway asset in question in circumstances in which he is entitled to do so without notice under or by virtue of subsection (2) of section 40 or 42 below, on the date on which that discontinuance takes place;
- (c) where the operator of the additional railway asset in question gives notice to the Franchising Director in respect of that additional railway asset under section 39 or 41 below, on the date specified by the operator pursuant to subsection (4)(b) of section 39 or subsection (3)(b) of section 41 below, as the case may be; or
- (d) where the operator of the additional railway asset in question discontinues the operation of that additional railway asset in circumstances in which he is entitled to do so without notice, under or by virtue of subsection (1), (2) or (3) of section 39 or subsection (1) or (2) of section 41 below, on the date on which that discontinuance takes place.

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31 Leases granted in pursuance of franchise agreements: no security of tenure

(1) In any case where—

- (a) a franchise agreement makes provision for the franchisee, the franchise operator or a wholly owned subsidiary of the franchisee to enter into an agreement (“the contemplated agreement”) with a person who has an interest in a network or a railway facility,
- (b) the network or railway facility is to be used for or in connection with the provision of any of the franchised services, and
- (c) the contemplated agreement creates a tenancy of any property which (whether in whole or in part) constitutes, or is comprised in, the network or railway facility,

neither Part II of the Landlord and Tenant Act 1954 (security of tenure of business premises) nor the Tenancy of Shops (Scotland) Act 1949 (security of tenure of shop premises in Scotland) shall apply to that tenancy.

(2) For the purposes of this section, a person shall be regarded as having an interest in a network or railway facility if he has an estate or interest in, or right over, any of the property which constitutes, or is comprised in, the network or railway facility.

(3) Any reference in this section to a network or a railway facility includes a reference to any part of a network or railway facility.

(4) In this section—

“agreement” includes a lease, underlease or sublease (as well as a tenancy agreement or an agreement for a lease, underlease or sublease);

“tenancy” has the same meaning as it has in Part II of the Landlord and Tenant Act 1954 or, in Scotland, as it has in the Tenancy of Shops (Scotland) Act 1949.