
STATUTORY INSTRUMENTS

2009 No. 3336

The Railways (Transport for London) (Exemptions) Order 2009

Amendment of the Railways (London Regional Transport) (Exemptions) Order 1994

2.—(1) The Railways (London Regional Transport) (Exemptions) Order 1994(1) is amended as follows.

(2) In article 2 —

- (a) in the definition of “the Act”, for “Act” (where first appearing), substitute “1993 Act”;
- (b) after the definition of “the Act” (as amended by this Order), insert—

““the 2005 Act” means the Railways Act 2005(2);

“the 2008 Act” means the Crossrail Act 2008(3);

“concession agreement” means an agreement entered into by Transport for London or any of its subsidiaries, pursuant to which another person, not being a TfL company, agrees to provide a railway passenger service for Transport for London or the subsidiary concerned;

“Crossrail” has the meaning given in section 56(2) of the 2008 Act, namely a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich;

“Crossrail passenger service” means a service for the carriage of passengers by railway on a line the whole of which, or part of which, forms part of an underground railway to be constructed between, in the west, a tunnel portal at Royal Oak in the City of Westminster and, in the east, tunnel portals at Custom House and Pudding Mill Lane in the London Borough of Newham;

“East London Railway” means the railway on the following routes—

- (a) between Highbury & Islington station and West Croydon station via New Cross Gate station and Norwood Junction station;
- (b) between Highbury & Islington station and Crystal Palace station via New Cross Gate station;
- (c) between Surrey Quays station and Clapham Junction station via Denmark Hill station;
- (d) between Surrey Quays station and New Cross station;

“ELR concessionaire” has the meaning given in article 2B.”.

- (c) omit the definition of “TfL company” and after the definition of “qualifying activities”, insert—

(1) [S.I. 1994/573](#), amended by section 198(1), (2), (3) and (4) of the Greater London Authority Act 1999 (c. 29) and by [S.I. 2003/1615](#).

(2) 2005 c. 14.

(3) 2008 c. 18.

““railway passenger service” means a service for the carriage of passengers by railway, but does not include a Crossrail passenger service;

“shared station” means any of the following stations—

- (a) Bond Street station;
- (b) Farringdon station;
- (c) Liverpool Street station;
- (d) Tottenham Court Road station;
- (e) Whitechapel station,

or any part of such a station;

“specified route” means any of the following routes of the East London Railway—

- (a) between—
 - (i) the junction between the railway known as the North London Line and the East London Railway north of Dalston Junction station; and
 - (ii) the junctions with the slow lines of the railway that runs between London Bridge station and Brockley station, such junctions being New Cross Gate Down Junction and New Cross Gate Up Junction;
- (b) between Surrey Quays station and New Cross station;
- (c) between Surrey Quays station and the junction with the railway that runs between London Bridge station and Peckham Rye station, such junction being Old Kent Road Junction;

including those junctions and stations;

“TfL company” means—

- (a) Transport for London or any subsidiary of theirs; or
- (b) a PPP company, so far as carrying out qualifying activities;

“TfL concessionaire” means any person who, in relation to a railway passenger service provided for Transport for London or for any subsidiary of theirs, has agreed by a concession agreement for the time being to provide that service;

“TfL network” means the network which is owned, operated or managed by one or more TfL companies, and on which some or all of the regular scheduled railway passenger services are provided by Transport for London or any of its subsidiaries.”.

(3) After article 2 insert—

“Crossrail

2A.—(1) Subject to paragraph (3) and except in respect of any shared station, this Order does not apply in relation to any railway asset⁽⁴⁾, railway facility, or part of a railway asset or railway facility, that is—

- (a) constructed before, on or after the date of this Order coming into force in exercise of the powers conferred by the 2008 Act; and
- (b) used predominantly in connection with Crossrail.

⁽⁴⁾ Section 83 of the Railways Act 1993 (c.43) defines “railway asset” and “railway facility”. Section 58(2) of the Railways Act 2005 (c. 14) provides that these expressions have the same meaning as in the Railways Act 1993.

(2) In determining the predominant use of a railway asset, railway facility, or part of a railway asset or railway facility for the purposes of sub-paragraph (1)(b), temporary use for any purpose and any use for emergency purposes is to be disregarded.

(3) Paragraph (1) does not affect the application of this Order in relation to any railway asset, railway facility, or part of a railway asset or railway facility, that existed immediately before the commencement of the construction of any works in exercise of the powers conferred by the 2008 Act, and that is affected by such construction.

ELR concessionaire

2B.—(1) Subject to paragraph (2), “ELR concessionaire” means any person who, in relation to a railway passenger service provided for Transport for London or for any of Transport for London’s subsidiaries on any part of the East London Railway, has agreed by a concession agreement for the time being to provide that service.

(2) In respect of any part of the TfL network on which, or any stations on the TfL network from which, the ELR concessionaire provides a regular scheduled railway passenger service, the exemptions referred to in—

- (a) articles 3(a) and 4(a) only apply in respect of any part of the TfL network that is on a specified route; and
- (b) articles 3(b) and 4(b) and (d) only apply in respect of a station that is on a specified route.”.

(4) For article 3 substitute—

“Licence exemption

3. Exemption is granted to every TfL company from the requirement in section 6 of the 1993 Act (prohibition on unauthorised operators of railway assets) to be authorised by licence to be the operator of—

- (a) the TfL network, or any part of the TfL network, on which no regular scheduled railway passenger services are provided other than by a TfL company or any ELR concessionaire or both;
- (b) any station on the TfL network and from which no regular scheduled railway passenger services are provided other than by a TfL company or any ELR concessionaire or both;
- (c) any light maintenance depot used in connection with the TfL network and which is not used in connection with the provision, other than by a TfL company, of railway passenger services;
- (d) the light maintenance depot at the New Cross Gate facility at Juno Way, London SE14, provided that such depot is used in connection with the TfL network and is not used in connection with the provision, other than by a TfL company or any TfL concessionaire or both, of railway passenger services;
- (e) any train—
 - (i) being used on any part of the TfL network as is mentioned in paragraph (a) for any purpose comprised in the operation of that network or that part of that network, or for a purpose preparatory or incidental to or consequential on, any such use; or
 - (ii) being used on a network for a purpose preparatory or incidental to, or consequential on, the provision of light maintenance services at any such light maintenance depot as is mentioned in paragraph (c).”.

(5) For article 4, substitute—

“Facility exemption

4. Exemption from sections 17 and 18 of the 1993 Act (access to railway facilities) is granted to every TfL company in respect of each of the following railway facilities, where the TfL company is the facility owner—

- (a) track comprised in the TfL network, or any part of the TfL network, as mentioned in article 3(a);
- (b) every such station as is mentioned in article 3(b);
- (c) every such light maintenance depot as is mentioned in article 3(c) or (d);
- (d) any part of a station on the TfL network (other than such a station as is mentioned in article 3(b)), which part is not used in connection with the provision, other than by a TfL company or any ELR concessionaire or both, of regular scheduled railway passenger services.”.

(6) In article 5, for “Act”, substitute “1993 Act”.

(7) In article 6—

- (a) in paragraphs (1), (2) and (3), for “Act”, substitute “1993 Act(5)”; and
- (b) after paragraph (3), insert—

“(4) Section 22 (proposal by service operator to discontinue non-franchised services), section 23 (proposal by funding authority to discontinue non-franchised services) and section 24 (proposals to discontinue franchised or secured services) of the 2005 Act do not apply in relation to a railway passenger service that—

- (a) is provided by a TfL concessionaire for Transport for London, or for any of Transport for London’s subsidiaries, pursuant to a concession agreement; and
- (b) begins and ends in Greater London and does not otherwise make any scheduled call outside Greater London.

(5) Section 29 (proposal by operator to close station), section 30 (proposal by funding authority to close station) and section 31 (proposal to discontinue operation of secured station) of the 2005 Act do not apply in relation to a station, or part of a station, described in paragraph (6).

(6) Paragraph (5) refers to a station, or part of such a station, which station or part is operated by a TfL concessionaire for Transport for London, or for any of Transport for London’s subsidiaries, pursuant to a concession agreement, where—

- (a) no railway passenger services are provided from that station, or that part of that station, other than services which—
 - (i) are provided by a TfL concessionaire for Transport for London, or for any of Transport for London’s subsidiaries, pursuant to a concession agreement, or are provided by a TfL company, or both; and
 - (ii) begin and end in Greater London and do not otherwise make any scheduled call outside Greater London; or
- (b) the previous operator of that station, or that part of that station, was a TfL company.”.

(8) After article 6, insert—

(5) Sections 37, 39 and 41 of the Railways Act 1993 (c.43), as well as the enabling power in section 49 of that Act, were repealed by the Railways Act 2005 (c. 14), section 59(6), Schedule 13, Part 1. However, section 38(4) of the Railways Act 2005 contains a saving for any order made under the repealed provisions in section 49 of the Railways Act 1993.

“Designation of London service provided by a TfL concessionaire

7. Any railway passenger service which—

- (a) is provided by a TfL concessionaire for Transport for London, or for any of Transport for London’s subsidiaries, pursuant to a concession agreement; and
- (b) begins and ends in Greater London and does not otherwise make any scheduled call outside Greater London,

is designated as a London service and as a special procedure service for the purposes of section 25 of the 2005 Act”.