



# Railways Act 1993

## 1993 CHAPTER 43

### PART I

#### THE PROVISION OF RAILWAY SERVICES

##### *Passenger Transport Authorities and Executives*

### **32 Power of Passenger Transport Executives to enter into agreements with wholly owned subsidiaries of the Board**

- (1) The Transport Act 1968 shall have effect with the following amendments, which are made for the purpose of enabling Passenger Transport Executives to enter into agreements under section 20(2)(b) of that Act (securing provision of railway services considered appropriate to meet public transport requirements for the Executive's area) with wholly owned subsidiaries of the Board, as well as with the Board.
- (2) In section 10(1)(vi) (power of Executive to make payments to the Board for certain services)—
  - (a) after the words "Railways Board" there shall be inserted the words ", or any wholly-owned subsidiary of that Board,"; and
  - (b) after the words "the Board" there shall be inserted the words "or the subsidiary (as the case may be)".
- (3) In section 15(1)(d) (Executive to obtain the Authority's approval of any agreement proposed to be entered into otherwise than under section 20(2)(b) with the Board for the provision by the Board of certain services)—
  - (a) after the words "Railways Board" there shall be inserted the words "or a wholly-owned subsidiary of that Board"; and
  - (b) after the words "the Board" there shall be inserted the words "or the wholly-owned subsidiary".
- (4) In section 20(2)(b)—
  - (a) after the words "section 10 of this Act" there shall be inserted the words "and subject to sections 33 and 34 of the Railways Act 1993";

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- (b) after the words “that Board” there shall be inserted the words “, or with any wholly-owned subsidiary of that Board,”; and
  - (c) for the words “the Board” there shall be substituted the words “, between them, the Board and their wholly-owned subsidiaries”.
- (5) In section 20(4) (payments to the Board)—
- (a) after the words “to the Railways Board” there shall be inserted the words “or a wholly-owned subsidiary of that Board”; and
  - (b) after the words “provided by the Board” there shall be inserted the words “or the subsidiary”.
- (6) In section 20(6) (resolution of disputes)—
- (a) after the words “Railways Board” there shall be inserted the words “or any wholly-owned subsidiary of that Board”; and
  - (b) after the words “the Board” there shall be inserted the words “or the subsidiary”.

### **33 Re-negotiation of section 20(2) agreements as a result of this Act**

- (1) It shall be the duty of the Board and of every Passenger Transport Authority and every Passenger Transport Executive to co-operate with each other with a view to reaching agreement about—
- (a) the changes that need to be made to existing section 20(2) agreements as a result of the provisions of this Act or anything done or to be done pursuant to any such provision;
  - (b) whether those changes can best be made by amending the existing section 20(2) agreements or by terminating those agreements and entering into new section 20(2) agreements in their place; and
  - (c) the amendments that need to be made to the existing section 20(2) agreements or, as the case may be, the provisions that need to be contained in the new section 20(2) agreements.
- (2) The Secretary of State may give notice to the Board, and to the Passenger Transport Authority and the Passenger Transport Executive for any passenger transport area, specifying the date by which they are—
- (a) to have reached agreement on the matters specified in paragraphs (a) to (c) of subsection (1) above, so far as relating to the existing section 20(2) agreement with which they are concerned; and
  - (b) to have made to that existing section 20(2) agreement the amendments mentioned in paragraph (c) of that subsection or, as the case may be, to have entered into a new section 20(2) agreement, containing the provisions mentioned in that paragraph, in place of the existing section 20(2) agreement.
- (3) If, in a case where the Secretary of State has given notice under subsection (2) above, the requirements of paragraphs (a) and (b) of that subsection have not been complied with by the date specified in that notice, he may issue directions to the Board and to the Passenger Transport Executive in question requiring them—
- (a) to make to the existing section 20(2) agreement in question amendments determined by him and specified in the directions, or
  - (b) to enter into a new section 20(2) agreement, on terms determined by him and specified in the directions, in place of the existing section 20(2) agreement,
- by such date as may be specified in the directions.

- (4) The Board or any Passenger Transport Executive may refer to the Secretary of State any dispute which arises in the course of negotiations concerning the matters specified in paragraphs (a) to (c) of subsection (1) above; and on any such reference the Secretary of State may give such directions as he thinks fit to the Board and to the Passenger Transport Executive in question.
- (5) Without prejudice to the generality of the directions that may be given on a reference under subsection (4) above, the Secretary of State may, on any such reference, give directions to the Board and to the Passenger Transport Executive in question requiring the Board and that Executive—
- (a) to make to the existing section 20(2) agreement in question amendments determined by him and specified in the directions; or
  - (b) to enter into a new section 20(2) agreement, on terms determined by him and specified in the directions, in place of the existing section 20(2) agreement, by such date as may be specified in the directions.
- (6) Where the Secretary of State gives directions under this section with respect to the amendments that are to be made to an existing section 20(2) agreement or the terms on which a new section 20(2) agreement is to be entered into, any requirement for the consent of the Passenger Transport Authority in question to be obtained to the making of those amendments or that agreement shall be dispensed with.
- (7) This section shall apply in relation to any section 20(2) agreement which has been amended or entered into pursuant to this section as it applies in relation to an existing section 20(2) agreement, and “existing section 20(2) agreement” shall be construed accordingly.
- (8) In this section—
- “section 20(2) agreement” means an agreement made between the Board and a Passenger Transport Executive pursuant to section 20(2)(b) of the Transport Act 1968 (whether or not the agreement has been amended or entered into pursuant to this section);
  - “existing section 20(2) agreement”, subject to subsection (7) above, means a section 20(2) agreement entered into before the coming into force of this section;
  - “new section 20(2) agreement” means a section 20(2) agreement made at or after the coming into force of this section;
- and any reference to the Board includes a reference to a wholly owned subsidiary of the Board.

#### **34 Passenger Transport Authorities and Executives: franchising**

- (1) The fact that any services for the carriage of passengers by railway are, or are to be, provided by the Board or a wholly owned subsidiary of the Board under a section 20(2) agreement does not preclude the designation of those services under section 23(1) above as eligible for provision under a franchise agreement.
- (2) Subsection (1) above does not affect the continuing validity of any section 20(2) agreement and, accordingly, no services provided, or to be provided, under such an agreement shall begin to be provided under a franchise agreement until such time as the section 20(2) agreement in question has terminated.

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- (3) Subject to section 35(7) below, a Passenger Transport Executive shall continue to have power to enter into section 20(2) agreements with the Board or any wholly owned subsidiary of the Board for the provision of services for the carriage of passengers by railway until such time as the services in question first begin to be provided under a franchise agreement; and, accordingly, once the services first begin to be so provided, the Executive in question shall cease to have power to enter into a section 20(2) agreement for the provision of those services.
- (4) The Franchising Director—
- (a) before issuing an invitation to tender under section 26 above in respect of any services for the carriage of passengers by railway within the passenger transport area of a Passenger Transport Executive, or
  - (b) in a case where the Secretary of State has given a direction under section 26(1) above which has effect in relation to any such services, before entering into a franchise agreement in respect of any of those services,
- shall comply with the requirements imposed upon him by subsection (5) below.
- (5) The requirements mentioned in subsection (4) above are that the Franchising Director must give notice to the Passenger Transport Executive for the area in question—
- (a) of his intentions with respect to the inclusion, in any franchise agreement contemplated by that subsection, of provisions relating to the operation of any additional railway assets wholly or partly within the area in question, and
  - (b) of his intention—
    - (i) in a case falling within paragraph (a) of that subsection, to issue the invitation to tender, or
    - (ii) in a case falling within paragraph (b) of that subsection, to enter into the franchise agreement,
- and must, in either of the cases mentioned in paragraph (b) above, consult that Executive, which may, before the expiration of the period of 60 days immediately following the date specified in that notice as its date of issue, submit to him a statement under this subsection.
- (6) A statement under subsection (5) above—
- (a) shall specify the services for the carriage of passengers by railway which the Passenger Transport Authority for the area in question considers it appropriate to secure to meet any public transport requirements within that area, so far as relating to the provision of services of the same description as those in respect of which the Franchising Director proposes—
    - (i) to issue the invitation to tender mentioned in paragraph (b)(i) of that subsection, or
    - (ii) to enter into the franchise agreement mentioned in paragraph (b)(ii) of that subsection,
 as the case may be;
  - (b) may specify the minimum level of quality to which any services so specified are to be provided;
  - (c) may (subject to section 28(3) above) specify requirements with respect to the fares to be charged to persons using any services so specified; and
  - (d) may specify the minimum level of quality with respect to the operation of any station (but not any other additional railway asset) which may be required by any such franchise agreement as is mentioned in subsection (5)(a) above.

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- (7) A Passenger Transport Executive which has submitted a statement under subsection (5) above to the Franchising Director may from time to time amend that statement by giving notice of the amendments to the Franchising Director; and where any such statement is so amended, any reference in this section to the statement submitted under subsection (5) above shall be taken as a reference to that statement as for the time being amended.
- (8) Where a Passenger Transport Executive has submitted a statement under subsection (5) above to the Franchising Director, the Franchising Director shall ensure that the services, and any minimum levels of quality or requirements with respect to fares, specified in that statement—
- (a) in a case falling within paragraph (a) of subsection (4) above, are included in the specification of the services in respect of which the invitation to tender is issued; or
  - (b) in a case falling within paragraph (b) of that subsection, are provided for in any franchise agreement into which he may enter in respect of the services mentioned in that paragraph.
- (9) A Passenger Transport Executive shall be a party to any franchise agreement which relates, whether in whole or in part, to the provision, within the Executive's passenger transport area, of services specified in a statement under subsection (5) above.
- (10) The Franchising Director and any Passenger Transport Executive may enter into agreements with each other as to the terms on which franchise agreements to which the Executive is a party are to be entered into.
- (11) Before entering into a franchise agreement, a Passenger Transport Executive for a passenger transport area shall submit to the Passenger Transport Authority for that area, and obtain that Passenger Transport Authority's approval of, the proposed franchise agreement.
- (12) It shall be the duty of every Passenger Transport Authority and every Passenger Transport Executive to facilitate the attainment by the Franchising Director of the objective of securing expeditiously that franchise agreements are entered into in respect of any services for the carriage of passengers by railway within their passenger transport area—
- (a) which are for the time being the subject of section 20(2) agreements; but
  - (b) which are designated under section 23(1) above as eligible for provision under franchise agreements.
- (13) In any case where—
- (a) any services ("the PTA services") are included, in consequence of a statement under subsection (5) above, among those which are to be provided under a franchise agreement or a franchise agreement requires the operation of any additional railway assets as mentioned in paragraph (a) of that subsection,
  - (b) the franchise agreement does not make provision for the Passenger Transport Executive for the area in question to make payments to the franchisee or the franchise operator in respect of the provision of the PTA services or the operation of the additional railway assets, and
  - (c) payments by way of grant in respect of the provision of the PTA services or the operation of the additional railway assets fall to be made by the Franchising Director pursuant to conditions contained in the franchise agreement by virtue of section 29(1)(b) above,

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the Passenger Transport Executive shall pay to the Franchising Director, at or before the time at which any such payment as is mentioned in paragraph (c) above is made, a sum equal to the amount of that payment.

- (14) Where, pursuant to section 30 above, the Franchising Director is under a duty to secure the provision of any services for the carriage of passengers by railway, or is empowered to secure the operation of any additional railway assets, within the passenger transport area of a Passenger Transport Executive, the Executive—
- (a) shall have power to enter into agreements with the Franchising Director with respect to the securing by him of—
    - (i) the provision of any of the services in question, or
    - (ii) the operation of any of the additional railway assets in question, until such time as they are again provided under a franchise agreement;
  - (b) shall make to the Franchising Director in respect of—
    - (i) the provision of any of the services in question whose provision he secures pursuant to section 30 above, and
    - (ii) the operation of any of the additional railway assets in question whose operation he secures pursuant to section 30 above,
 payments of such amounts, and at such times, as may be agreed between the Executive and the Franchising Director or, in default of agreement, of such amounts and at such times as the Secretary of State may direct; but
  - (c) shall not have power to enter into agreements with the Board or any wholly owned subsidiary of the Board for—
    - (i) the provision of any of the services in question, or
    - (ii) the operation of any of the additional railway assets in question.
- (15) Without prejudice to the generality of the provisions which may be included in any agreement made between the Franchising Director and a Passenger Transport Executive under paragraph (a) of subsection (14) above, such an agreement may, in particular, contain provisions concerning—
- (a) the services for the carriage of passengers by railway which the Passenger Transport Authority for the passenger transport area in question considers it appropriate to secure to meet any public transport requirements within that area,
  - (b) the minimum level of quality to which any such services are to be provided,
  - (c) the fares to be charged to persons using any such services, or
  - (d) the minimum level of quality to which the operation of any station (but not of any other additional railway asset) is to be secured under sub-paragraph (ii) of that paragraph.
- (16) The Secretary of State shall not direct a Passenger Transport Executive to make any payment under subsection (14)(b) above, except in respect of—
- (a) any service—
    - (i) which is provided under an agreement entered into by the Franchising Director pursuant to his duty under section 30 above, and
    - (ii) which under the terms of that agreement is required to involve calls at more than one station within the passenger transport area of the Executive, or
  - (b) any additional railway asset which is operated under an agreement entered into by the Franchising Director pursuant to his power under that section,

“call” meaning for this purpose any stop at a station for the purpose of allowing passengers to board or leave the train (including the stops at the stations at the beginning and end of any journey to which the service relates).

(17) If any dispute arises between the Franchising Director and a Passenger Transport Executive in connection with—

- (a) a proposal by the Franchising Director to issue an invitation to tender, or to enter into a franchise agreement, in respect of services for the carriage of passengers by railway within the passenger transport area of that Executive, or
- (b) any franchise agreement which has been entered into in respect of any such services, or in respect of any such services and any additional railway asset,

either of them may refer the dispute to the Secretary of State for determination and on any such reference the Secretary of State may give to the Franchising Director or the Passenger Transport Executive such directions with respect to the dispute as he may think fit.

(18) Without prejudice to subsection (17) above—

- (a) if the Franchising Director considers it desirable to do so for the purpose of securing expeditiously that a franchise agreement is entered into in respect of services for the carriage of passengers by railway within the passenger transport area of a Passenger Transport Executive, he may apply to the Secretary of State for directions under this subsection; or
- (b) if a Passenger Transport Executive for any passenger transport area considers it desirable to do so for the purpose of securing expeditiously that a franchise agreement is entered into in respect of services for the carriage of passengers by railway within that passenger transport area, the Executive may apply to the Secretary of State for directions under this subsection;

and on any such application, the Secretary of State may give for that purpose such directions as he may think fit to the Franchising Director or the Executive.

(19) Without prejudice to the generality of the directions that may be given under subsection (17) or (18) above, but subject to subsection (20) below, the Secretary of State may, in particular, give a direction under either of those subsections—

- (a) requiring the Franchising Director or the Executive to enter into a franchise agreement on such terms as may be specified in the direction;
- (b) providing that any one or more of subsections (4) to (11) and (13) above, or any part of any of those subsections, shall not have effect with respect to a franchise agreement; or
- (c) requiring the Executive to make payments in respect of—
  - (i) the provision under a franchise agreement of services for the carriage of passengers by railway within their passenger transport area, whether or not the inclusion of those services among the services which are to be provided under the franchise agreement is in consequence of a statement submitted under subsection (5) above by the Executive and whether or not the Executive is a party to the franchise agreement; or
  - (ii) the operation under or by virtue of a franchise agreement of additional railway assets wholly or partly within their passenger transport area, whether or not the Executive is a party to the franchise agreement;

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and, without prejudice to any other provision of this Act, any reference in paragraph (b) or (c) above to a franchise agreement includes a reference to a proposed franchise agreement.

(20) The Secretary of State shall not give a direction under subsection (19)(c) above requiring a Passenger Transport Executive to make payments in respect of the provision under a franchise agreement of services for the carriage of passengers by railway, or the operation under or by virtue of a franchise agreement of additional railway assets, except in respect of—

- (a) such of those services as are required by the terms of the franchise agreement—
  - (i) to be provided during the relevant period in the case of that direction, and
  - (ii) to involve calls at more than one station within the passenger transport area of the Executive, or
- (b) such of those additional railway assets as are required by or under the terms of the franchise agreement to be operated during the relevant period in the case of that direction,

“call” having the same meaning in this subsection as it has in subsection (16) above.

(21) For the purposes of subsection (20) above, the “relevant period”, in the case of any direction, is the period which is made up of—

- (a) the financial year in which the direction is given,
- (b) the financial year immediately preceding that in which the direction is given, and
- (c) the financial year immediately following that in which the direction is given, “financial year” meaning for this purpose the period of twelve months ending with 31st March.

(22) In this section—

“public transport requirements” has the same meaning as it has in the Transport Act 1968;

“section 20(2) agreement” has the same meaning as in section 33 above.

(23) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

### **35 Termination and variation of section 20(2) agreements by the Franchising Director**

(1) This section applies in any case where services for the time being provided under a section 20(2) agreement by the Board or a wholly owned subsidiary of the Board have been designated under section 23(1) above as eligible for provision under a franchise agreement.

(2) If, in a case where this section applies, a franchise agreement is entered into in respect of all the services for the time being provided under the section 20(2) agreement, the Franchising Director shall serve a notice on the parties to the section 20(2) agreement terminating that agreement on such date (“the termination date”) as may be specified in the notice.



- (3) Where notice is served under subsection (2) above, the parties to the section 20(2) agreement—
- (a) shall be taken to have agreed to terminate that agreement on the termination date, and
  - (b) shall accordingly be released from the performance of their obligations under that agreement after that date,
- and the section 20(2) agreement shall not have effect after the termination date, except so far as relating to anything done, or required to be done, pursuant to the agreement on or before that date.
- (4) If, in a case where this section applies, a franchise agreement is entered into in respect of some, but not all, of the services for the time being provided under the section 20(2) agreement, the Franchising Director may serve a notice on the parties to the section 20(2) agreement varying the terms of that agreement.
- (5) Where notice is served under subsection (4) above—
- (a) the parties to the section 20(2) agreement shall be taken to have agreed to a variation of the section 20(2) agreement such that the services to be provided under the franchise agreement shall, after such date as may be specified in the notice, no longer be provided under the section 20(2) agreement; and
  - (b) the section 20(2) agreement shall have effect with such further modifications which are necessary to give effect to, or are consequential on, the variation referred to in paragraph (a) above as the parties may agree or, in default of agreement, as may be determined on a reference to arbitration.
- (6) For the purposes of subsection (5)(b) above—
- (a) either party to the section 20(2) agreement may refer the matter in dispute to arbitration after giving the other not less than fourteen days' notice of his intention to do so; and
  - (b) if the parties are unable to agree on the appointment of a person as the arbitrator, either of them, after giving the other not less than fourteen days' notice of his intention to do so, may by notice request the Franchising Director to appoint a person as the arbitrator.
- (7) Where a section 20(2) agreement is terminated or varied by virtue of this section, the Passenger Transport Executive in question shall not have power to enter into another such agreement for the provision of the services which are to be provided under the franchise agreement referred to in subsection (2) or (4) above (as the case may be) without the consent of the Franchising Director.
- (8) Where a section 20(2) agreement has been entered into, but services have not begun to be provided under it, this section shall have effect in relation to the services which are to be provided as it has effect in relation to services for the time being provided under a section 20(2) agreement.
- (9) Any reference in this section to an arbitrator shall, in Scotland, be taken as a reference to an arbiter.
- (10) In this section, “section 20(2) agreement” has the same meaning as it has in section 33 above.

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### **36 Miscellaneous amendments of the Transport Act 1968**

(1) In section 10 of the Transport Act 1968, in subsection (1) (which specifies the powers of Passenger Transport Executives) after paragraph (vi) there shall be inserted—

“(via) with the approval of the Authority, to enter into and carry out agreements with any person who is the operator of, or who has an estate or interest in, or right over, a network, station or light maintenance depot or some part of a network, station or light maintenance depot, in connection with the building, replacement, redevelopment, refurbishment, repair, maintenance, operation or staffing of the network, station or light maintenance depot or any part thereof;”.

(2) After paragraph (viii) of that subsection there shall be inserted—

“(viiia) to let locomotives and other rolling stock on hire to any person who is (within the meaning of Part I of the Railways Act 1993) the franchisee or the franchise operator under a franchise agreement to which the Executive is a party;

(viiib) to let locomotives and other rolling stock on hire to a person not falling within paragraph (viiia) above—

(a) for or in connection with the provision of railway passenger services within that area or within the permitted distance; or

(b) with the written consent of the Secretary of State, for or in connection with the provision of railway passenger services outside that area and beyond the permitted distance;

(viiic) with the approval of the Authority, to enter into and carry out agreements with the owner of any locomotive or other rolling stock concerning the persons to whom, or the terms on which, the locomotive or other rolling stock may be let on hire;”.

(3) In section 20(2) of that Act, in paragraph (a) (duty of Passenger Transport Executive to keep under review the railway passenger services provided by the Railways Board for meeting the needs of persons travelling between places in the Executive’s passenger transport area etc) for the words “by the Railways Board” there shall be substituted the words “by passenger service operators (within the meaning of Part I of the Railways Act 1993)”.

(4) After section 23 of that Act there shall be inserted—

#### **“23A Interpretation of certain provisions of this Part relating to railways**

(1) For the purposes of sections 10, 15 and 20 of this Act—

(a) “light maintenance depot”, “locomotive”, “network”, “railway passenger services”, “rolling stock” and “station” have the meaning given in section 83(1) of the Railways Act 1993; and

(b) “operator” has the meaning given in section 6(2) of that Act.

(2) For the purposes of sections 10(1)(vi), 15(1)(d) and 20(2)(b), (4) and (6) of this Act “wholly-owned subsidiary” has the meaning given by section 736 of the Companies Act 1985.”.

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- (5) In section 159(1) of that Act (general interpretation), in the definition of “subsidiary” and “wholly-owned subsidiary”, for the words “subject to section 51(5)” there shall be substituted the words “subject to sections 23A(2) and 51(5)”.