



# Railways Act 1993

## 1993 CHAPTER 43

### PART II

#### RE-ORGANISATION OF THE RAILWAYS

##### *New companies, transfer schemes and disposals*

#### **84 Powers of the Board to form companies.**

- (1) The Board shall have power to form, or take part in forming, companies—
  - (a) for the purposes of the Board's business;
  - (b) for the purpose of facilitating the disposal of—
    - (i) the whole or any part of the undertaking, or any property, rights or liabilities, of the Board or of any wholly owned subsidiary of the Board; or
    - (ii) without prejudice to the generality of sub-paragraph (i) above, any securities of any subsidiary of the Board;
  - (c) for the purpose of facilitating the performance by the Franchising Director of his functions under sections 23 to 36 above;
  - (d) for such other purposes as may be specified by the Secretary of State in a direction to the Board.
- (2) The Secretary of State may, after consultation with the Board, direct the Board to exercise any power conferred by paragraph (a), (b), (c) or (d) of subsection (1) above; and, if he so directs, he may also give the Board directions with respect to—
  - (a) the nature and objects of the company which is to be formed;
  - (b) the manner in which, and time within which, it is to be formed.
- (3) The Board shall not exercise any power conferred by subsection (1) above, except—
  - (a) in the case of the power conferred by paragraph (a), with the consent of, or pursuant to a direction given under subsection (2) above by, the Secretary of State; or
  - (b) in any other case, pursuant to such a direction.

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- (4) Each of the powers conferred on the Board by this section—
- (a) is in addition to, and not in derogation from, any other powers of the Board; and
  - (b) relates only to the capacity of the Board as a statutory corporation;
- and nothing in this section shall be construed as authorising the disregard by the Board of any enactment or rule of law.

## **85 Powers of the Board to make transfer schemes.**

- (1) The Board shall have power to make schemes for the transfer of the whole or any part of the undertaking, or any property, rights or liabilities, of—
- (a) the Board,
  - (b) any wholly owned subsidiary of the Board,
  - (c) any publicly owned railway company,
  - (d) the Franchising Director, or
  - (e) any company which is wholly owned by the Franchising Director,
- to any other person falling within paragraphs (a) to (e) above or to a franchise company.
- (2) In relation to the transfer or disposal (or the proposed transfer or disposal) of the whole or any part of an undertaking, any reference in this Part to property, rights or liabilities includes a reference to the undertaking or part (and, accordingly, to the property, rights and liabilities comprised in that undertaking or part).
- (3) The powers conferred on the Board by subsection (1) above shall only be exercisable—
- (a) for the purposes of the Board’s business, or to facilitate a disposal in the ordinary course of that business;
  - (b) for the purpose of effecting or facilitating the disposal of such property, rights or liabilities as the Secretary of State may direct; or
  - (c) for the purpose of facilitating the performance by the Franchising Director of his functions under sections 23 to 36 above,
- and paragraph (a) above accordingly applies only in relation to transfers between the Board and any of its wholly owned subsidiaries or between two or more of its wholly owned subsidiaries.
- (4) The Secretary of State may, after consultation with the Board, direct the Board to exercise any power conferred by subsection (1) above; and, if he does so, he may also give the Board directions with respect to—
- (a) the manner in which, and time within which, the power is to be exercised;
  - (b) the property, rights or liabilities to be transferred;
  - (c) the person to whom the transfer is to be made.
- (5) The Board shall not exercise the power conferred by subsection (1) above—
- (a) for a purpose falling within paragraph (a) of subsection (3) above, except with the consent of, or pursuant to a direction given under subsection (4) above by, the Secretary of State; or
  - (b) for a purpose specified in paragraph (b) or (c) of subsection (3) above, except pursuant to such a direction.

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- (6) Subject to the following provisions of this Part, on the day on which a scheme under subsection (1) above comes into force (in this Part referred to as the “transfer date”) the property, rights and liabilities affected by the scheme shall, subject to section 97 below, be transferred and vest by virtue of, and in accordance with, the scheme.
- (7) Each of the powers conferred on the Board by this section—
  - (a) is in addition to, and not in derogation from, the other powers so conferred and the other powers of the Board; and
  - (b) relates only to the capacity of the Board as a statutory corporation;and nothing in this section shall be construed as authorising the disregard by the Board of any enactment or rule of law.
- (8) In this Part, “franchise company” means any body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement.
- (9) Expressions used in subsection (8) above and in Part I above have the same meaning in that subsection as they have in that Part.

**Modifications etc. (not altering text)**

C1 S. 85(6) applied (11.1.1994) by 1994 c. 9, s. 252(1), Sch. 24 para. 1(1)

**86 Powers of the Franchising Director to make transfer schemes.**

- (1) The Franchising Director shall have power to make schemes for the transfer, at or after the end of the franchise period, of property, rights and liabilities which, immediately before the end of that period, are for the time being designated as franchise assets for the purposes of the franchise agreement in question to—
  - (a) the Franchising Director;
  - (b) a company which is wholly owned by the Franchising Director; or
  - (c) a franchise company.
- (2) In the following provisions of this section—
  - (a) the “transferor” means the person from whom any such property, rights or liabilities as are mentioned in subsection (1) above are transferred by a scheme under this section; and
  - (b) the “transferee” means the person to whom any such property, rights or liabilities are so transferred.
- (3) Subject to any contrary agreement or arrangements which may be made between the transferor and the transferee, where any property, rights or liabilities are transferred by a scheme under this section, there shall be paid by the transferee to the transferor or, as the case may require, by the transferor to the transferee, on the day on which the scheme comes into force such sums as may be specified in, or determined in accordance with, the franchise agreement mentioned in subsection (1) above.
- (4) Subject to the following provisions of this Part, on the day on which a scheme under this section comes into force, the property, rights and liabilities affected by the scheme shall, subject to section 97 below, be transferred and vest by virtue of and in accordance with the scheme.
- (5) Except as otherwise provided by this Act—

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- (a) any reference in this Act to a “transfer scheme” shall be taken as including a reference to a scheme under this section;
  - (b) in the application of any provision of this Act in relation to a scheme under this section, any reference to the “transfer date” shall be taken as a reference to the date on which the scheme comes into force.
- (6) In this section “franchise agreement”, “franchise period” and “designated as franchise assets” have the same meaning as they have in Part I above.
- (7) Any sums required by the Franchising Director for the purpose of making payments in respect of property, rights or liabilities transferred by a scheme under this section shall be paid by the Secretary of State out of money provided by Parliament.
- (8) Any sums received by the Franchising Director in respect of property, rights or liabilities so transferred shall be paid into the Consolidated Fund.

**87 Transfer to the Secretary of State or the Franchising Director of the Board’s function of making transfer schemes.**

- (1) The Secretary of State may by order transfer any functions of the Board under section 85 above to himself or to the Franchising Director.
- (2) An order under this section may provide for the transfer of the function in question for all purposes or for such purposes as may be specified in the order.
- (3) Where any function is transferred to the Franchising Director under this section, the Secretary of State may, after consultation with the Franchising Director, direct the Franchising Director to exercise the function by making a scheme for the transfer of an undertaking or part of an undertaking, or any property, rights or liabilities, to a publicly owned railway company, a company wholly owned by the Franchising Director or a franchise company; and, if the Secretary of State gives such a direction, he may also—
- (a) give the Franchising Director directions with respect to any matter specified in paragraph (a), (b) or (c) of section 85(4) above; or
  - (b) if the transfer is directed to be made to a publicly owned railway company which has not yet been formed, direct the Franchising Director to form, or take part in forming, a company for the purpose.
- (4) In relation to any function transferred to the Franchising Director under this section, subsection (3) above shall have effect in substitution for subsection (4) of section 85 above and any reference in this Act to a direction under the said subsection (4) shall be construed accordingly.
- (5) An order under this section may make such modifications of this Part as may be consequential upon, or incidental or supplemental to, the transfer effected by the order.

**Commencement Information**

- II** S. 87 wholly in force at 1.4.1994; s. 87 not in force at Royal Assent see s. 154(2); s. 87(1) in force for specified purpose and s. 87(2)(5) wholly in force at 6.1.1994 by [S.I. 1993/3237](#), [art. 2\(2\)](#); s. 87 in force at 1.4.1994 insofar as not already in force by [S.I. 1994/571](#), [art. 5](#)

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**88 Transfers of interests in certain companies: provisions supplemental to sections 84 to 87.**

- (1) Where the Secretary of State gives the Board directions—
  - (a) under section 84 above, with respect to the formation of a wholly owned subsidiary of the Board, and
  - (b) under section 85 above, with respect to the making of a scheme for the transfer of anything to that wholly owned subsidiary,the wholly owned subsidiary of the Board shall remain such until the transfer under the scheme has taken effect.
- (2) Where the Secretary of State gives the Board directions under section 85 above with respect to the making of a scheme for the transfer of anything to a company which is wholly owned by the Crown, that company shall remain wholly owned by the Crown until the transfer under the scheme has taken effect.
- (3) Where the Secretary of State gives the Franchising Director directions under or by virtue of section 87 above with respect to the making of a scheme for the transfer of anything to a publicly owned railway company, that company shall remain a publicly owned railway company until the transfer under the scheme has taken effect.
- (4) Where a wholly owned subsidiary of the Board is formed pursuant to a direction under section 84 above, none of the following persons, that is to say, the Board, any wholly owned subsidiary of the Board or any person acting on behalf of the Board or its wholly owned subsidiaries, shall dispose of any interests in that subsidiary except—
  - (a) with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent; or
  - (b) pursuant to a direction of the Secretary of State under subsection (6) below or section 89 below.
- (5) None of the following persons, that is to say, the Franchising Director, any company which is wholly owned by the Franchising Director or any person acting on behalf of the Franchising Director or any such company, shall dispose of any interests in a company which is wholly owned by the Franchising Director except—
  - (a) with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent; or
  - (b) pursuant to a direction of the Secretary of State under subsection (7) below.
- (6) The Secretary of State may at any time direct the Board to transfer, or arrange for there to be transferred, to him or such other person as may be specified in the direction any interests in a company so specified, being a wholly owned subsidiary of the Board formed pursuant to a direction under section 84 above, which are for the time being held by or on behalf of the Board.
- (7) The Secretary of State may at any time direct the Franchising Director to transfer, or arrange for there to be transferred, to the Secretary of State or such other person as may be specified in the direction any interests in any company so specified which are for the time being held by the Franchising Director, any company which is wholly owned by the Franchising Director or any person acting on behalf of the Franchising Director or any such company.
- (8) Where the Secretary of State gives a direction under subsection (6) or (7) above, it shall be the duty of the Board or, as the case may be, the Franchising Director to secure that the interests in question are transferred in accordance with the terms of the direction

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in such manner, and on or before such date, as may be specified for the purpose in the direction, and notwithstanding any duty imposed upon the Board by section 3(1) of the <sup>M1</sup>Transport Act 1962.

**Marginal Citations**

**M1** 1962 c. 46.

**89 Disposals by the Board and its subsidiaries.**

- (1) If the Secretary of State, after consultation with the Board, so directs, the Board shall dispose or secure the disposal (whether by way of sale, lease or exchange and, if by way of sale or lease, whether for nominal or valuable consideration) of—
  - (a) the whole or any part of the undertaking, or any property, rights or liabilities, of the Board or of any wholly owned subsidiary of the Board; or
  - (b) without prejudice to paragraph (a) above, any securities of any subsidiary of the Board which are held by or on behalf of the Board or any other subsidiary of the Board.
- (2) The directions that may be given under this section by the Secretary of State include directions specifying—
  - (a) the manner in which, and time within which, the disposal is to be effected;
  - (b) that which is to be disposed of;
  - (c) the person to whom the disposal is to be made.
- (3) No disposal shall be made by the Board, or by any subsidiary of the Board, in pursuance of a direction under this section except with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent.
- (4) The powers of disposal conferred on the Board by virtue of this section are in addition and without prejudice to those conferred by section 14(1)(e) of the <sup>M2</sup>Transport Act 1962 (power to dispose of any part of the Board’s undertaking, or any property, no longer required for the purposes of the Board’s business) which shall accordingly also continue to be exercisable by the Board.
- (5) In section 27 of the <sup>M3</sup>Transport Act 1962, in subsection (4) (which provides that the Secretary of State may direct the Board and the British Waterways Board to discontinue any of their activities, dispose of any part of their undertaking, dispose of any assets held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantees given by them) the words “dispose of any part of their undertaking, dispose of any assets held by them” shall cease to have effect in so far as relating to the Board.

**Marginal Citations**

**M2** 1962 c. 46.

**M3** 1962 c. 46.

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**90 Directions to the Board about the exercise of rights conferred by holdings in companies.**

- (1) The Secretary of State may, after consultation with the Board, give directions to the Board with respect to the exercise of any rights conferred on the Board by the holding of interests in companies.
- (2) A direction under subsection (1) above may be general in character or may relate to the manner in which such rights as are mentioned in that subsection are to be exercised in a particular case.
- (3) In section 27 of the <sup>M4</sup>Transport Act 1962, in subsection (1) (which provides that the Secretary of State may give general directions to the Board as to the exercise and performance of their functions in relation to matters appearing to him to affect the national interest, including the exercise of rights conferred by the holding of interests in companies) the words “ (including the exercise of rights conferred by the holding of interests in companies) ” shall cease to have effect so far as relating to the Board.
- (4) Subsection (5) of that section (which provides that the Secretary of State may, after consultation with the Board, direct the Board to exercise control over a subsidiary of the Board so as to require the subsidiary to discontinue any of their activities, dispose of any part of their undertaking, dispose of any assets held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantees given by them) shall cease to have effect so far as relating to the Board.

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**Marginal Citations**

**M4** 1962 c. 46.

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