



Railways Act 2005

2005 CHAPTER 14

PART 2

PUBLIC SECTOR FUNDING AUTHORITIES FOR RAILWAYS

Assisting and securing the provision of services

6 Financial assistance etc. from the Secretary of State

- (1) The Secretary of State may provide, or agree to provide, financial assistance to any person—
 - (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
 - (b) for any other purpose relating to a railway or to railway services.
- (2) For the purposes of this section the provision of financial assistance includes each of the following—
 - (a) the making of grants or loans;
 - (b) the giving of guarantees; and
 - (c) investments in bodies corporate.
- (3) Agreements or other arrangements entered into by the Secretary of State under this section may be entered into on whatever terms, and subject to whatever conditions, he considers appropriate.
- (4) In exercising his powers under this section—
 - (a) for any purpose mentioned in section 9(1) in relation to which powers are exercisable by the Scottish Ministers under section 8, or
 - (b) for any purpose mentioned in section 11(1) in relation to which powers are exercisable by the National Assembly for Wales under section 10,the Secretary of State must have regard to the desirability of acting consistently with anything notified to him under section 9 or 11.

Status: This is the original version (as it was originally enacted).

- (5) A power of the Secretary of State under this section or otherwise to enter into agreements or other arrangements (other than franchise agreements) for a purpose set out in subsection (1) may be exercised by his entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or arrangement is entered into in accordance with that franchise agreement.
- (6) For the purposes of subsection (5) a person is a relevant person in relation to a franchise agreement if he is—
- (a) the franchise operator;
 - (b) the franchisee; or
 - (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.
- (7) In this section “railway” has its wider meaning.
- (8) Paragraph (a) of subsection (1) of section 17 of the Ministry of Transport Act 1919 (c. 50) (grants or loans for the construction, improvement or maintenance of railways, light railways or tramways) shall cease to have effect.

7 Notification of assistance from Secretary of State for freight services

- (1) This section applies if the Secretary of State makes or modifies a scheme setting out how he proposes to exercise his powers under section 6 for the purpose of securing the provision, improvement or development of—
- (a) services for the carriage of goods by railway; or
 - (b) facilities for or in connection with—
 - (i) the carriage of goods by railway; or
 - (ii) the loading or unloading of goods carried or intended to be carried by railway.
- (2) This section also applies if the Secretary of State makes or modifies a determination of the criteria that he will apply in exercising his functions under such a scheme.
- (3) The Secretary of State must send a copy of the scheme or determination, or (as the case may be) of the scheme or determination as modified—
- (a) to the Scottish Ministers; and
 - (b) to the National Assembly for Wales.
- (4) In this section—
- “facilities” includes track, rolling stock, depots, access roads and equipment; and
- “railway” has its wider meaning.

8 Franchising and financial assistance in relation to Scotland

- (1) For the purposes of being a party to a franchise agreement the Scottish Ministers shall have power to provide, or to agree to provide, financial assistance to the franchisee—
- (a) for the purpose of securing the provision, improvement or development of the Scottish services to which the agreement relates; or
 - (b) for any other purpose relating to the provision of those services.

Status: This is the original version (as it was originally enacted).

- (2) The Scottish Ministers shall also have power, where they do so wholly or primarily for Scottish purposes, to provide, or to agree to provide, financial assistance to persons otherwise than under franchise agreements—
 - (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
 - (b) for any other purpose relating to a railway or to railway services.
- (3) In subsection (2) “Scottish purposes” means any of the following—
 - (a) any purposes connected with a Scottish service or proposed Scottish service;
 - (b) the provision, improvement or development of services for the carriage of goods by railway where the services are to be or are provided wholly or partly in Scotland;
 - (c) the provision, improvement or development of facilities for use for or in connection with—
 - (i) the carriage of goods by railway using services that are to be or are provided wholly or partly in Scotland; or
 - (ii) the loading or unloading of goods so carried or intended to be so carried.
- (4) For the purposes of this section the provision of financial assistance includes each of the following—
 - (a) the making of grants or loans;
 - (b) the giving of guarantees; and
 - (c) investments in bodies corporate.
- (5) Agreements and other arrangements entered into by the Scottish Ministers under subsection (1) or (2) may be entered into on whatever terms, and subject to whatever conditions, they consider appropriate.
- (6) In exercising their powers under this section for any purpose mentioned in subsection (1) of section 7, the Scottish Ministers must have regard to the desirability of acting consistently with anything notified to them under that section.
- (7) The power of the Scottish Ministers under subsection (2) may be exercised by their entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or other arrangement is entered into in accordance with that franchise agreement.
- (8) For the purposes of subsection (7) a person is a relevant person in relation to a franchise agreement if he is—
 - (a) the franchise operator;
 - (b) the franchisee; or
 - (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.
- (9) In this section—
 - “facilities” includes track, rolling stock, depots, access roads and equipment;
 - “railway” has its wider meaning;
 - “Scottish service” means any service which is a Scotland-only service or a cross-border service.

Status: This is the original version (as it was originally enacted).

9 Notification of assistance from Scottish Ministers for freight services

- (1) This section applies if the Scottish Ministers make or modify a scheme setting out how they propose to exercise their powers under section 8 for the purpose of securing the provision, improvement or development of—
 - (a) services for the carriage of goods by railway; or
 - (b) facilities for or in connection with—
 - (i) the carriage of goods by railway; or
 - (ii) the loading or unloading of goods carried or intended to be carried by railway.
- (2) This section also applies if the Scottish Ministers make or modify a determination of the criteria that they will apply in exercising their functions under such a scheme.
- (3) The Scottish Ministers must send a copy of the scheme or determination, or (as the case may be) of the scheme or determination as modified, to the Secretary of State.
- (4) In this section—

“facilities” includes track, rolling stock, depots, access roads and equipment; and

“railway” has its wider meaning.

10 Franchising and financial assistance in relation to Wales

- (1) Before—
 - (a) issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include Welsh services, or
 - (b) entering into a franchise agreement in respect of services that are or include Welsh services in a case in which no such invitation has been issued,the Secretary of State must consult the National Assembly for Wales.
- (2) The Secretary of State may not enter into a franchise agreement relating to services that are or include Wales-only services unless the National Assembly for Wales joins with him as a party to the agreement.
- (3) For the purposes of being a party to a franchise agreement (whether or not in a case falling within subsection (2)) the National Assembly for Wales shall have power to provide, or to agree to provide, financial assistance to the franchisee—
 - (a) for the purpose of securing the provision, improvement or development of any Welsh services to which the agreement relates; or
 - (b) for any other purpose relating to the provision of those services.
- (4) The National Assembly for Wales shall also have power, where it does so wholly or primarily for Welsh purposes, to provide, or to agree to provide, financial assistance to persons otherwise than under franchise agreements—
 - (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
 - (b) for any other purpose relating to a railway or to railway services.
- (5) In subsection (4) “Welsh purposes” means any of the following—
 - (a) any purposes connected with a Welsh service or proposed Welsh service;

Status: This is the original version (as it was originally enacted).

- (b) the provision, improvement or development of services for the carriage of goods by railway where the services are to be or are provided wholly or partly in Wales;
 - (c) the provision, improvement or development of facilities for use for or in connection with—
 - (i) the carriage of goods by railway using services that are to be or are provided wholly or partly in Wales; or
 - (ii) the loading or unloading of goods so carried or intended to be so carried.
- (6) The National Assembly for Wales may make payments to the Secretary of State or the Scottish Ministers in respect of the performance of his or their duty under section 30 of the 1993 Act (provision of services by operator of last resort) in relation to a Welsh service.
- (7) For the purposes of this section the provision of financial assistance includes each of the following—
- (a) the making of grants or loans;
 - (b) the giving of guarantees; and
 - (c) investments in bodies corporate.
- (8) Agreements and other arrangements entered into by the National Assembly for Wales under subsection (3) or (4) may be entered into on whatever terms, and subject to whatever conditions, the Assembly considers appropriate.
- (9) In exercising its powers under this section for any purpose mentioned in subsection (1) of section 7, the National Assembly for Wales must have regard to the desirability of acting consistently with anything notified to it under that section.
- (10) The power of the National Assembly for Wales under subsection (4) may be exercised by its entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or other arrangement is entered into in accordance with that franchise agreement.
- (11) For the purposes of subsection (10) a person is a relevant person in relation to a franchise agreement if he is—
- (a) the franchise operator;
 - (b) the franchisee; or
 - (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.
- (12) In this section—
- “facilities” includes track, rolling stock, depots, access roads and equipment;
 - “railway” has its wider meaning.

11 Notification of assistance from Welsh Assembly for freight services

- (1) This section applies if the National Assembly for Wales makes or modifies a scheme setting out how it proposes to exercise its powers under section 10 for the purpose of securing the provision, improvement or development of—
- (a) services for the carriage of goods by railway; or
 - (b) facilities for or in connection with—

Status: This is the original version (as it was originally enacted).

- (i) the carriage of goods by railway; or
 - (ii) the loading or unloading of goods carried or intended to be carried by railway.
- (2) This section also applies if the National Assembly for Wales makes or modifies a determination of the criteria that it will apply in exercising its functions under such a scheme.
- (3) The National Assembly for Wales must send a copy of the scheme or determination, or (as the case may be) of the scheme or determination as modified, to the Secretary of State.
- (4) In this section—
- “facilities” includes track, rolling stock, depots, access roads and equipment; and
 - “railway” has its wider meaning.

12 Transfer schemes at end of franchising agreements

- (1) This section applies where a franchise agreement is or has been in force.
- (2) The appropriate national authority may make a scheme for the transfer, at or after the end of the franchise period, of relevant franchise assets from the franchise company to a person specified in subsection (3), or to two or more of those persons.
- (3) Those persons are—
- (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) a company which is wholly owned by the Secretary of State or the Scottish Ministers;
 - (d) a company which is jointly owned by the Secretary of State and the Scottish Ministers; and
 - (e) a franchise company.
- (4) Before making a scheme under this section, the appropriate national authority must consult every person to whom relevant franchise assets would be transferred under the proposed scheme.
- (5) On the day on which a scheme made under this section comes into force—
- (a) the transferee or transferees must pay to the transferor, or
 - (b) the transferor must pay to the transferee or transferees,
- such sums as may be specified in, or determined in accordance with, the franchise agreement.
- (6) Subsection (5) is subject to any other agreement between the transferor and the transferee or transferees.
- (7) Schedule 2 (which contains supplemental provisions about transfer schemes) has effect in relation to schemes under this section.
- (8) In this section—
- “the appropriate national authority” means—
 - (a) in relation to a franchise agreement to which the Secretary of State is a party, the Secretary of State; and

- (b) in relation to a franchise agreement to which the Scottish Ministers are a party, the Scottish Ministers;
 - “franchise company” means a person who is, or is to be, the franchisee or the franchise operator under a franchise agreement;
 - “relevant franchise assets” means property, rights and liabilities which, immediately before the end of the franchise period which is ending or has ended, will be or were designated as franchise assets for the purposes of the agreement;
 - “transferee”, in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and
 - “transferor”, in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme.

Passenger Transport Executives

13 Railway functions of Passenger Transport Executives

- (1) Before—
 - (a) issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include services in which a Passenger Transport Executive for an area in England have an interest, or
 - (b) entering into a franchise agreement in respect of such services in a case in which no such invitation has been issued,the Secretary of State must consult the Executive for that area.
- (2) For the purposes of subsection (1) the services in which a Passenger Transport Executive have an interest are—
 - (a) services for the carriage of passengers by railway within the passenger transport area of that Executive; and
 - (b) services which are not such services but are services for the carriage of passengers by railway to or from such an area.
- (3) A Passenger Transport Executive for a passenger transport area in England and the Secretary of State may enter into arrangements under which one or both of the following occurs—
 - (a) sums become due from the Executive to the Secretary of State in respect of services for the carriage of passengers by railway within that area or in respect of station services or bus substitution services provided within that area; and
 - (b) the Secretary of State undertakes to exercise or perform his powers and duties in relation to or in connection with such services in a particular way.
- (4) A Passenger Transport Executive for a passenger transport area in England may enter into agreements for purposes relating to or connected with the provision, by a person who is a franchisee or franchise operator in relation to a franchise agreement, of—
 - (a) services for the carriage of passengers by railway within that area; and
 - (b) station services provided for purposes connected with any such services.
- (5) A Passenger Transport Executive for a passenger transport area in England may not enter into an agreement (whether by virtue of subsection (4) or otherwise)—
 - (a) with a person who is a franchisee or franchise operator in relation to a franchise agreement, or

Status: This is the original version (as it was originally enacted).

- (b) with a person who is proposing to become such a franchisee or franchise operator,
unless the agreement is approved by the Secretary of State.
- (6) The Secretary of State may—
 - (a) give a general approval for the purposes of subsection (5) in relation to a description of agreements, as well as specific approvals for particular agreements; and
 - (b) withdraw his approval in relation to any agreement at any time before the agreement is entered into.
- (7) The agreements to which a Passenger Transport Executive for a passenger transport area in England may become a party with the approval of the Secretary of State include franchise agreements under which services are provided which are or include services for the carriage of passengers by railway within that area.
- (8) The Secretary of State and the Passenger Transport Executive for a passenger transport area in England must each provide to the other any information which—
 - (a) the other reasonably requires for purposes connected with his or their functions in relation to railways or railway services; and
 - (b) is information which it would have been lawful for him or (as the case may be) them to disclose apart from this subsection.
- (9) In this section—
 - (a) a reference to a service for the carriage of passengers by railway within a passenger transport area is a reference to a service for the carriage of passengers by railway between places in that area or between places in that area and places outside it which are within the permitted distance;
 - (b) a reference to station services provided within such an area is a reference to station services provided in connection with any such service for the carriage of passengers by railway; and
 - (c) a reference to a bus substitution service provided within such an area is a reference to a bus substitution service for the carriage of passengers between places in that area or between places in that area and places outside it which are within the permitted distance;

and in this subsection “the permitted distance” has the same meaning as in section 10(1)(ii) of the Transport Act 1968 (c. 73) (25 miles).

14 Repeals and savings relating to Passenger Transport Executives

- (1) The following provisions shall cease to have effect—
 - (a) in section 10(1) of the Transport Act 1968, paragraphs (vi) and (viza) (powers to enter into agreements with the SRA);
 - (b) section 20(2)(b) and (3) of that Act (duty of PTE to enter into agreements to secure the provision of railway passenger services and to provide information for that purpose); and
 - (c) sections 34 and 35 of the 1993 Act (role of PTAs and PTEs in relation to franchising and the termination and variation of agreements under section 20(2) of the 1968 Act).
- (2) Subject to subsection (3), a Passenger Transport Executive who are a party to a franchise agreement immediately before the commencement of subsection (1) may

continue to be a party to that agreement after that time, notwithstanding anything in subsection (1) of this section or in section 13.

- (3) Where a Passenger Transport Executive are a party to a franchise agreement immediately before the commencement of subsection (1) of this section—
 - (a) subsection (2) of this section and section 13(4) and (7) are to be disregarded for the purpose of giving effect to any provision of the agreement by virtue of which a person may cause the Executive to cease to be a party to it; and
 - (b) the Executive must comply with all such directions as may be given to them by the Secretary of State to take steps for the purpose of ceasing to be a party to the agreement.
- (4) The provisions of this section and the repeals made by this Act do not affect the application of the following provisions in relation to a franchise agreement into which a Passenger Transport Executive entered before the commencement of subsection (1) of this section, that is to say—
 - (a) subsection (17) of section 34 of the 1993 Act (disputes); and
 - (b) any other enactment so far as it has effect for the purposes of or in relation to that subsection of that section.
- (5) In the operation of any enactment by virtue of subsection (4) of this section references in that enactment to the Strategic Rail Authority are to have effect as references to the Secretary of State.

London

15 Duty of Secretary of State and Transport for London to co-operate

- (1) Section 175 of the Greater London Authority Act 1999 (c. 29) (duty of Transport for London and the SRA to cooperate) is amended as follows.
- (2) In subsection (1) (duty of co-operation)—
 - (a) for “Strategic Rail Authority”, where first occurring, substitute “Secretary of State”; and
 - (b) omit the words after paragraph (b) (which relate to the exchange of information).
- (3) After that subsection insert—

“(1A) Before—

 - (a) issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include London railway passenger services, or
 - (b) entering into a franchise agreement in respect of such services in a case in which no such invitation has been issued,

the Secretary of State must consult Transport for London.

(1B) The Secretary of State and Transport for London must each provide to the other any information which—

 - (a) the other reasonably requires for a purpose mentioned in subsection (1)(a) or (b); and
 - (b) is information which it would have been lawful for him or (as the case may be) it to disclose apart from this subsection.”

Status: This is the original version (as it was originally enacted).

- (4) In subsection (2) (power of Transport for London and SRA to enter into arrangements as to how they will exercise and perform their functions), for “Strategic Rail Authority” substitute “Secretary of State”.
- (5) After that subsection insert—
- “(2A) Those arrangements may include arrangements under which sums become due from Transport for London to the Secretary of State—
- (a) in respect of London railway passenger services;
- (b) in respect of station services provided in connection with such services; or
- (c) in respect of bus substitution services provided as alternatives for London railway passenger services.”
- (6) In subsection (3) (references to functions of the SRA), for “Strategic Rail Authority”, “its” and “it” substitute, respectively, “Secretary of State”, “his” and “him”.
- (7) After that subsection insert—
- “(3A) A reference in this section to a London railway passenger service is a reference to—
- (a) a service for the carriage of passengers by railway between places in Greater London; or
- (b) a service for the carriage of passengers by railway between places in Greater London and places outside Greater London.
- (3B) Expressions used in this section and in Part 1 of the Railways Act 1993 have the same meanings in this section as in that Part.”

16 Relaxation of contractual restrictions on Transport for London

- (1) Section 201 of the Greater London Authority Act 1999 (c. 29) (restriction on Transport for London entering into agreements that involve the holding of a licence under the 1993 Act) shall cease to have effect.
- (2) Transport for London may not enter into an agreement—
- (a) with a person who is a franchisee or franchise operator in relation to a franchise agreement, or
- (b) with a person who is proposing to become such a franchisee or franchise operator,
- unless the agreement is approved by the Secretary of State.
- (3) An agreement that relates exclusively to the grant of permission by a facility owner for a person to use a railway facility of his does not require the approval of the Secretary of State under subsection (2) in any case in which Transport for London or a subsidiary of its is the facility owner or the person granted permission.
- (4) The Secretary of State may—
- (a) give a general approval for the purposes of subsection (2) in relation to a description of agreements, as well as specific approvals for particular agreements; and
- (b) withdraw his approval in relation to any agreement at any time before the agreement is entered into.

- (5) The agreements to which Transport for London may become a party with the approval of the Secretary of State include franchise agreements under which services are provided which are or include services for the carriage of passengers by railway between places in Greater London.
- (6) In this section “subsidiary” has the meaning given to it by section 736 of the Companies Act 1985 (c. 6).

17 Membership of Transport for London

- (1) Paragraph 2 of Schedule 10 to the Greater London Authority Act 1999 (c. 29) (membership of Transport for London) is amended as follows.
- (2) In sub-paragraph (1) (which imposes a maximum of fifteen on the number of members appointed by the Mayor), for “fifteen” substitute “seventeen”.
- (3) In sub-paragraph (2) (which imposes a maximum of fourteen on the number so appointed where the Mayor is himself a member), for “fourteen” substitute “sixteen”.
- (4) After sub-paragraph (2) insert—
 - “(2A) The Mayor must exercise his powers under this paragraph so as to secure that at least two members of Transport for London are able to represent the interests of the persons living, working and studying in areas outside Greater London that are served by railway passenger services in respect of which Transport for London carries out functions, or is likely to do so.”
- (5) After sub-paragraph (3) insert—
 - “(3A) Before making an appointment for the purposes of sub-paragraph (2A) above, the Mayor must consult the regional planning body for each of the regions where the areas served by the services mentioned in that sub-paragraph are situated.”
- (6) After sub-paragraph (5) insert—
 - “(5A) Notwithstanding sub-paragraphs (4) and (5)—
 - (a) a person who is a member of a principal council may be appointed to be, and remain, a member of Transport for London if his appointment is one in performance of the Mayor’s duty under paragraph (2A); but
 - (b) no more than two such persons may be members of Transport for London at the same time.”
- (7) After sub-paragraph (7) insert—
 - “(8) In this paragraph—
 - “railway passenger service” has the same meaning as in Part 1 of the Railways Act 1993; and
 - “regional planning body” and “region” have the same meanings as in Part 1 of the Planning and Compulsory Purchase Act 2004.”
- (8) It shall be the duty of the Mayor of London, within the period of six months beginning with the commencement of subsection (4)—
 - (a) to review the existing membership of Transport for London; and

Status: This is the original version (as it was originally enacted).

- (b) to decide whether it is necessary for the purposes of the sub-paragraph inserted by that subsection for him to exercise any of his powers under paragraph 2 of Schedule 10 to the Greater London Authority Act 1999.
- (9) Before making that decision the Mayor must consult the same regional planning bodies (within the meaning of that paragraph) as he is required to consult before making an appointment for the purposes of that sub-paragraph.

Provision of service by provider of last resort

18 Qualification of duty in respect of services funded by others

- (1) In subsection (3) of section 30 of the 1993 Act (restrictions on duty to provide service as provider of last resort) after paragraph (a) insert—
 - “(aa) require the relevant franchising authority to provide or secure the provision of a Welsh service where it appears to the authority that it will not be receiving funds from the National Assembly for Wales that are reasonably equivalent to those provided by that Assembly (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee;
 - (ab) require the Secretary of State to provide or secure the provision of a service within the area of a Passenger Transport Executive where it appears to him that he will not be receiving funds from the Executive that are reasonably equivalent to those provided by that Executive (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee;
 - (ac) require the Secretary of State to provide or secure the provision of a service that makes scheduled calls in Greater London where it appears to him that he will not be receiving funds from Transport for London that are reasonably equivalent to those that were provided by Transport for London (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee;”.
- (2) In that section, at the end, insert—
 - “(3C) In this section—
 - “previous franchisee”, in relation to a railway passenger service, means the franchisee in relation to the franchise agreement under which the service was previously provided; and
 - “Welsh service” has the same meaning as in the Railways Act 2005;
 and references in this section to a Passenger Transport Executive and to a service within the area of a Passenger Transport Executive are to be construed as they are to be construed for the purposes of section 13 of that Act.”