

# DEREGULATION ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 8: Provision of passenger rail services*

#### **Franchise exemptions granted by Secretary of State: protection of railway assets etc**

675. *Paragraph 8* inserts a new section 24A into the Railways Act 1993. Section 24A extends the scope of what provision may be made by the Secretary of State in a section 24 Railways Act 1993 de-designation order (i.e. an order de-designating passenger rail services from the franchising regime of that Act and authorising those services to be provided by persons other than the Secretary of State). Section 24A would enable the Secretary of State to apply similar railway asset protection, contract enforcement and asset transfer provisions in connection with an “operator agreement” (i.e. a contract for de-designated passenger rail services) as currently apply in connection with franchise agreements of the Secretary of State. (Although section 49 of the Act removes the 25 mile distance limit on the power of a PTE in England to provide passenger rail services, for such a PTE to take over services from the Secretary of State a de-designation order would still be required.) More specifically section 24A would enable a section 24 de-designation order of the Secretary of State to provide as follows.

- Section 24A(1) provides that a section 24 order may set conditions to be complied with by a railway operator engaged to provide passenger rail services.
- Section 24A(2)(a) to (d) would enable the Secretary of State, through a section 24 order, to apply various statutory protections to railway assets used for de-designated rail services as currently apply to railway assets used for franchised rail services. The asset protection measures could be similar to those in section 27(3), and (5) to (7), and section 31 of the Railways Act 1993.
  - Section 27(3) and (5) of the Railways Act 1993 prevent a franchise operator dealing with (e.g. agreeing to dispose of, charge, or grant rights over) assets needed for railway operations without the franchising authority’s consent, in default of which the transaction would be void.
  - Section 27(6) and (7) of the Railways Act 1993 prevent franchise assets being seized and sold by due legal process to satisfy monies owed by a franchise operator.
  - Section 31 of the Railways Act 1993 would deny security of tenure to an operator in relation to tenancies of railway premises.
  - These provisions, in sections 27 and 31 of the Railways Act 1993, are designed to ensure that assets needed for railway operations are kept intact, such that upon operator default or failure the railway operations could be taken over as a going concern by a successor, thus enabling continuity of passenger rail services.

*These notes refer to the Deregulation Act 2015 (c.20)  
which received Royal Assent on 26 March 2015*

- Section 24A(2)(e) would enable the Secretary of State, through a section 24 order, to make similar provision for enforcement of an operator agreement as applies to franchise agreements with the Secretary of State (in sections 55 to 58 of the Railways Act 1993).
  - Under sections 55 to 57F of the Railways Act 1993, if a franchise operator was in breach of a franchise agreement, the Secretary of State could (a) make an order requiring the operator to take steps to comply with it, in default of which a civil penalty would be payable or (b) impose a civil penalty. Penalties are restricted to a maximum of 10% of turnover. An operator can make representations and objections, and challenge the enforcement action in the High Court for exceeding powers or for being in breach of procedural requirements. The duty of the franchisee to comply with an order is a duty owed to any person who may be affected by its contravention, and actionable as such for breach. The Secretary of State may enforce the order by civil proceedings for an injunction, or any other appropriate remedy.
  - Section 58 of the Railways Act 1993 applies where it appears a franchisee is in breach of a franchise agreement or an enforcement order under section 55. It enables the Secretary of State to require documents to be produced, or information furnished, for purposes in connection with the enforcement of a franchise agreement. It does not enable documents to be produced, or information to be furnished, which could not be required in civil proceedings. Failure to comply, without reasonable excuse, is an offence subject to a fine on summary conviction not exceeding level 5 on the standard scale. It is also an offence for a person, who has been so required to produce a document, to intentionally alter, suppress or destroy any such document. This offence is subject, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment to an unlimited fine.
- Section 24A(2)(f), read with section 24A(4), would empower the Secretary of State, through a section 24 order, to enable a transfer scheme to be made to transfer railway assets, rights and liabilities from an outgoing operator, where an operator agreement ends (on expiry or for default), which is similar to a transfer scheme made under section 12 of, and Schedule 2 to, the Railways Act 2005 at the end of a franchise agreement with the Secretary of State in order to facilitate continuity of rail services. The power would only apply in relation to operator agreements made with a PTE, local transport authority or relevant company (i.e. a company wholly owned by a PTE, or local transport authority, or a company in respect of which all the owners are either a PTE or local transport authority). The power would enable the Secretary of State to authorise a PTE, or local transport authority, which was party to an operator agreement (or which was an owner of a relevant company which was party to an operator agreement) to make the transfer scheme. The scheme could transfer assets, rights and liabilities held by the outgoing operator to any PTE or local transport authority which was party to the operator agreement (or which was an owner of a relevant company which was party to an operator agreement), or to a relevant company or to a successor operator contracted by the public authority. It would require payment of such consideration for the transfer as would be specified in, or determined in accordance with, the operator agreement.

676. [Paragraph 8](#) forms part of the law of England and Wales and Scotland only. But it only affects section 24 Railways Act 1993 de-designation orders made by the Secretary of State (i.e. orders which relate to passenger rail services other than ones which start and end in Scotland).