

2009 No. 3336

LONDON GOVERNMENT

TRANSPORT

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

<i>Made</i> - - - -	<i>15th December 2009</i>
<i>Laid before Parliament</i>	<i>21st December 2009</i>
<i>Coming into force</i> - -	<i>12th January 2010</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 7(1), (2) and (12), 16B(1), (2) and (6), 20(1), (2) and (11), 143(4) and 151(5) of the Railways Act 1993(a), and sections 25(7), 38(1)(b), and 56(5)(a) and (b) of the Railways Act 2005(c).

The Secretary of State has consulted the Office of Rail Regulation in accordance with sections 7(1), 16B(1) and 20(1) of the Railways Act 1993.

Citation and commencement

1. This Order may be cited as the Railways (Transport for London) (Exemptions) Order 2009 and comes into force on 12th January 2010.

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

2.—(1) The Railways (London Regional Transport) (Exemptions) Order 1994(d) 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—

(a) 1993 c. 43; sections 7(1), 16B(1) and 20(1) were amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 3(a). Section 7(1) was amended by the Transport Act 2000 (c. 38), Schedule 17, Part 1, paragraphs 1, 2(1) and (2), and by the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 1(1)(a), and Schedule 13, Part 1. Section 16B was inserted by the Transport Act 2000 (c.38), section 223. For the purposes of section 16B, the Secretary of State is ‘the appropriate facilities authority’, see section 16A(3A)(b) of the Railways Act 1993 (c. 43). Section 16B(1) was amended by the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 11(4). Section 20(2) was amended by the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17, 23(1), (3), and Schedule 31, Part 4. Section 24(1) and (2) were amended by the Railways Act 2005 (c. 14), Schedule 1, paragraphs 14(1) and (2).

(b) For the purposes of section 38(1), the Secretary of State is ‘the national authority’, see section 38(2)(c) of the Railways Act 2005 (c. 14).

(c) 2005 c. 14.

(d) 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.

“the 2005 Act” means the Railways Act 2005^(a);

“the 2008 Act” means the Crossrail Act 2008^(b);

“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—

““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;

(a) 2005 c. 14.
(b) 2008 c. 18.

- (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^(a), 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.

(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—

(a) 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.

“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(a)”; 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

(a) 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.

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—

“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”.

Amendment of the Railways (Provision etc. of Railway Facilities) (Exemptions) Order 2005

3.—(1) The Railways (Provision etc. of Railway Facilities) (Exemptions) Order 2005(a) is amended as follows.

(2) In Schedule 2, paragraph 1—

(a) after the definition of “the Board”, insert—

““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;”;

(b) omit “and” at the end of the definition of “specified station”;

(c) after the definition of “TfL company”, add—

““TfL concessionaire” means a person who, in relation to a railway passenger service provided for Transport for London or for any of Transport for London’s subsidiaries,

(a) S.I. 2005/2628.

has agreed by a concession agreement for the time being to provide that service, and a station is controlled by a TfL concessionaire where that concessionaire, in the course of a business (whether for profit or not), is in operational control of that station pursuant to a concession agreement; and

“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 a TfL company.”.

(3) In Schedule 2, after paragraph 3, insert—

3A. Any station or part of a station which is on the TfL network and controlled by a TfL concessionaire.

3B. Any station or part of station which is controlled by a TfL concessionaire, where the previous operator of that station, or that part of that station, was a TfL company.”.

Signed by authority of the Secretary of State for Transport

15th December 2009

C.D.Mole
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Railways (London Regional Transport) (Exemptions) Order 1994 and the Railways (Provision etc. of Railway Facilities) (Exemptions) Order 2005.

Article 2, in amending the Railways (London Regional Transport) (Exemptions) Order 1994 (“1994 Order”), disappplies that Order in respect of Crossrail, except in respect of certain stations where there will be shared use by Crossrail and London Underground services.

Article 2 also maintains the licence and facility exemptions granted to TfL companies in respect of the network owned, operated or managed by one or more TfL companies (“the TfL network”), including in circumstances where the whole or part of a railway asset or railway facility that existed before the commencement of any construction authorised by the Crossrail Act 2008 is affected by that construction.

Article 2 also excludes any Crossrail passenger service from the definition of a railway passenger service, such that the 1994 Order is disappplied in respect of Crossrail passenger services, and the provisions in that Order from which TfL companies currently benefit will not cease to apply as a result of the commencement of Crossrail passenger services.

Article 2 also extends the existing licence and facility exemptions for networks and stations to apply in circumstances where the ELR concessionaire provides railway passenger services pursuant to a concession agreement with Transport for London, or with any of Transport for London’s subsidiaries, on those parts of the East London Railway that are (or once constructed will be) on the TfL network.

Article 2 also extends the existing licence and facility exemptions to apply in respect of the New Cross Gate light maintenance depot, in circumstances where the depot is used in connection with the TfL network and is not used in connection with the provision of regular scheduled railway passenger services other than by a TfL company or a TfL concessionaire.

For the purpose of closure proposals, the provisions of sections 22, 23 and 24 of the Railways Act 2005, which relate to the discontinuance of railway passenger services, are excluded where the service is provided solely within Greater London by a TfL concessionaire pursuant to a concession agreement. The station closure provisions of sections 29, 30 and 31 of the Railways Act 2005 are excluded where a station or part of a station within Greater London is operated by a TfL concessionaire pursuant to a concession agreement, and either:

- (a) the only railway passenger services provided from that station (or that part of that station) are provided by the TfL concessionaire or a TfL company and are provided wholly within Greater London; or
- (b) the previous operator of that station (or that part of that station) was a TfL company.

In the case of railway passenger services provided by a TfL concessionaire on the TfL network and arising solely within Greater London, such services are designated, in relation to the operation of closure provisions in section 25 of the Railways Act 2005, as London services and special procedure services.

Article 3, in amending the Railways (Provision etc. of Railway Facilities) (Exemptions) Order 2005, extends the existing exemption that prevents an owner from being directed to improve or develop a railway facility in the form of a station (or part of a station) to apply where the station is controlled by a TfL concessionaire. *Article 3* also extends this exemption to apply where a station or part station controlled by a TfL concessionaire was previously operated by a TfL company.

An impact assessment has not been produced, because no impact on the costs of business, the public sector, third sector organisations, regulators or consumers is foreseen. An Explanatory Memorandum has been prepared and is available alongside the instrument on the OPSI website at www.opsi.gov.uk.

STATUTORY INSTRUMENTS

2009 No. 3336

LONDON GOVERNMENT

TRANSPORT

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

£5.50