
Changes to legislation: There are currently no known outstanding effects for the Railways Act 2005.
Cross Heading: Transfer of functions relating to franchise agreements. (See end of Document for details)

SCHEDULES

SCHEDULE 1

TRANSFER ETC. OF FUNCTIONS OF THE STRATEGIC RAIL AUTHORITY

PART 1

TRANSFER AND ABOLITION OF FUNCTIONS

Transfer of functions relating to franchise agreements

- 13 (1) In section 23 of the 1993 Act (passenger services to be subject to franchise agreements), in subsections (1) and (2), for “Authority”, wherever occurring, substitute “appropriate designating authority”.
- (2) After subsection (2) of that section insert—
- “(2ZA) Where the Scottish Ministers designate Scotland-only services, they may also designate cross-border services which—
- (a) they consider should be provided under the same franchise agreement as particular Scotland-only services or a particular class of them; and
- (b) are not exempt from designation under subsection (1) by virtue of section 24.
- (2ZB) Nothing in this section requires the Secretary of State to designate a cross-border service already designated by the Scottish Ministers.
- (2ZC) Before the Secretary of State or the Scottish Ministers designate a cross-border service he or they must consult the other.”
- (3) Subsection (2B) of that section (publication of designations etc.) shall cease to have effect.
- (4) In subsection (3) of that section—
- (a) before the definition of “franchise agreement” insert—
- ““the appropriate designating authority”—
- (a) in relation to Scotland-only services, means the Scottish Ministers; and
- (b) in relation to all other services, means the Secretary of State;
- “the appropriate franchising authority”—
- (a) in relation to a Scottish franchise agreement, means the Scottish Ministers; and
- (b) in relation to any other franchise agreement, means the Secretary of State;”

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- (b) in the definition of “franchise agreement”, for “with the Authority” substitute “with the Secretary of State, with the Scottish Ministers or with the Secretary of State and the National Assembly for Wales jointly,”.
- (5) Every designation made by the Strategic Rail Authority under section 23 of the 1993 Act which is in force immediately before the commencement of sub-paragraph (1) shall have effect after the commencement of that sub-paragraph as a designation in accordance with that section—
- (a) in the case of services that at that time were being provided under a franchise agreement the franchised services under which consist of or include Scotland-only services, by the Scottish Ministers; and
 - (b) in any other case, by the Secretary of State.

Commencement Information

- I1** Sch. 1 para. 13(1)(3) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**
- I2** Sch. 1 para. 13(2) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I3** Sch. 1 para. 13(4)(5) in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I4** Sch. 1 para. 13(4)(a) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**
- I5** Sch. 1 para. 13(4)(b) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**
- I6** Sch. 1 para. 13(5) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**

- 14 (1) Section 24 of the 1993 Act (franchise exemptions granted by the Secretary of State) is amended as follows.
- (2) In subsections (1) to (5) and (9), for “Secretary of State”, wherever occurring, substitute “appropriate designating authority”.
 - (3) In subsection (3)(a) and (b), for “he” in each place substitute “the appropriate designating authority”.
 - (4) After subsection (3) insert—
 - “(3A) Before granting a franchise exemption in respect of a cross-border service, the Secretary of State must consult the Scottish Ministers.”
 - (5) In subsection (4), for “he”, in both places, substitute “it”.
 - (6) In subsection (6), for “is not complied with, the Secretary of State” substitute “granted by the appropriate designating authority is not complied with, it”.
 - (7) In subsection (9), for “him”, in each place, substitute “it”.
 - (8) After subsection (12) insert—
 - “(12A) A statutory instrument containing an order under this section by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

Commencement Information

- I7** Sch. 1 para. 14 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**

- 15 (1) Section 26 of the 1993 Act (invitation to tender for franchises) is amended as follows.

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- (2) In subsection (1), for the words from the beginning to “Authority” substitute “ The appropriate franchising authority may select the person who is to be the franchisee in relation to a franchise agreement ”.
- (3) In subsections (2) and (3), for “Authority”, wherever occurring, substitute “ appropriate franchising authority ”.
- (4) Subsection (4) shall cease to have effect.
- (5) For subsections (5) to (10) (statement by the Secretary of State about his power to give directions) substitute—
 - “(4A) The Secretary of State and the Scottish Ministers shall each publish a statement of policy about how he proposes, or (as the case may be) they propose, to exercise the power under subsection (1) above.
 - (4B) The statement must in particular include the policy of the Secretary of State or the Scottish Ministers about—
 - (a) when his or their selection of the person to be a franchisee under a franchise agreement is likely to be from those submitting tenders in response to an invitation to do so;
 - (b) when it is likely such an invitation will not be issued; and
 - (c) the means by which he is, or they are, proposing that the selection will be made in cases where there is no such invitation.
 - (4C) In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must have regard to its statement of policy.
 - (4D) The Secretary of State or Scottish Ministers—
 - (a) may at any time alter or replace the statement of policy which he has made or (as the case may be) which they have made; and
 - (b) where that statement is altered or replaced, must publish the altered or replacement statement.
 - (4E) Before preparing, altering or replacing a statement of policy—
 - (a) the Secretary of State must consult the National Assembly for Wales and undertake such other consultation as he considers appropriate; and
 - (b) the Scottish Ministers must undertake such consultation as they consider appropriate.
 - (4F) Where a statement of policy is prepared, altered or replaced, a copy of it must be laid—
 - (a) in the case of a statement prepared, altered or replaced by the Secretary of State, before Parliament; and
 - (b) in the case of a statement prepared, altered or replaced by the Scottish Ministers, before the Scottish Parliament.”
- (6) The fact that a statement of policy has not been published by any person under section 26(4A) of the 1993 Act does not affect the validity of any selection made as mentioned in section 26(1) of that Act.

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- I8** Sch. 1 para. 15 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.
I9 Sch. 1 para. 15 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

- 16 For sections 26A, 26B and 26C of the 1993 Act (directions of the Secretary of State where no tenders or tenders appear unsatisfactory) substitute—

“26ZA No adequate tender for franchise received

- (1) This section applies in the case of an invitation to tender under section 26 for the provision of services if—
- (a) the appropriate franchising authority receives no tender in response to the invitation; or
 - (b) it receives a tender but considers that the services would be provided more economically and efficiently if they were provided otherwise than under a franchise agreement entered into in response to the tender.
- (2) The appropriate franchising authority may —
- (a) issue a new invitation to tender under section 26 for the provision of the services;
 - (b) decide to secure the provision of the services under a franchise agreement with a person who did not submit a tender; or
 - (c) decide not to seek to secure the provision of the services under a franchise agreement.
- (3) Nothing in this section prevents the appropriate franchising authority, where it has decided not to seek to secure the provision of services under a franchise agreement, from subsequently making a decision to issue a new invitation to tender for the provision of those services.”

Commencement Information

- I10** Sch. 1 para. 16 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.
I11 Sch. 1 para. 16 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

- 17 (1) In section 27 of the 1993 Act (transfer of franchise assets or shares), for “Authority”, wherever occurring, substitute “ appropriate franchising authority ”.
- (2) In subsection (8) and (9) of that section, for “Schedule 21 to the Transport Act 2000” substitute “ section 12 of the Railways Act 2005 ”.

Commencement Information

- I12** Sch. 1 para. 17 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.
I13 Sch. 1 para. 17 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

- 18 (1) In section 28 of the 1993 Act (fares and approved discount fare schemes), in subsection (2), for “Authority”, substitute “ appropriate franchising authority ”.
- (2) In subsection (4)—

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- (a) after “regarded” insert “, in relation to a franchise agreement,”; and
 - (b) for “Authority” substitute “ appropriate franchising authority ”.
- (3) Discount fare schemes which immediately before the commencement of this paragraph are approved for the purposes of section 28 of the 1993 Act are to be treated after the commencement of this paragraph as approved for the purposes of that section by the appropriate franchising authority.

Commencement Information

I14 Sch. 1 para. 18 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

I15 Sch. 1 para. 18 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

- 19 In section 29 of the 1993 Act (other terms and conditions of franchise agreements), for “Authority”, wherever occurring, substitute “ appropriate franchising authority ”.

Commencement Information

I16 Sch. 1 para. 19 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

I17 Sch. 1 para. 19 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

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