



EXPLANATORY NOTES

Passenger Railway Services (Public Ownership) Act 2024

Chapter 25

£8.14

PASSENGER RAILWAY SERVICES (PUBLIC OWNERSHIP) ACT 2024

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Passenger Railway Services (Public Ownership) Act 2024 which received Royal Assent on 28 November 2024 (c. 25).

- These Explanatory Notes have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
Legal background	4
Territorial extent and application	5
Commentary on provisions of Act	5
Section 1: Prohibition on franchise extensions and new franchises	5
Section 2: Future provision of services	5
Section 3: Application of public sector equality duty	6
Section 4: Consequential Provision	7
Section 5: Extent, commencement and short title	7
Schedule: Consequential amendments	7
Commencement	7
Annex A – Territorial extent and application in the United Kingdom	8
Annex B – Hansard References	9
Annex C – Progress of Bill Table	10

These Explanatory Notes refer to the Passenger Railway Services (Public Ownership) Act 2024 which received Royal Assent on 28 November 2024 (c.25).

Overview of the Act

- 1 The Passenger Railway Services (Public Ownership) Act (“the Act”) is a short Act amending specific provisions in the Railways Act 1993 (“RA93”) to remove the presumption in favour of private sector operation of franchised passenger services to facilitate the Government’s commitment to bring such train operations back into public ownership when current franchise contracts end.
- 2 It enables the Secretary of State, the Scottish Ministers and/or the Welsh Ministers (as the appropriate franchising authorities) to secure the provision of designated railway passenger services via contracts with public sector operators (referred to in the Act as “public sector companies”); and to commence the transition to public sector operation as current contracts reach their end date or contractual break point. The Act also disapplies the requirement (under regulation 22 of the Public Service Obligations in Transport Regulations 2023/1369 (“the 2023 Regulations”)) to give at least 12 months’ notice before awarding such contracts to public sector companies.
- 3 The Act removes the power to award franchises to private sector operators via a competitive tendering process and the requirement to publish a statement on how that power will be exercised. However, the Act enables the Secretary of State to make short further awards or extensions to existing incumbent private sector operators where satisfied that, at that time, it will not be reasonably practicable to provide or to secure the provision of the railway passenger services by awarding a contract to a public sector company.

Policy background

- 4 Prior to the amendments made by the Act, RA93 was inconsistent with the Government’s commitment to bring railway passenger services back into public ownership when existing contracts with private sector operators end.
- 5 This Act is needed because RA93 was designed to facilitate the privatisation of British Rail in the 1990s and established a presumption in favour of private sector operation of passenger services. RA93 empowered the appropriate franchising authority to appoint franchisees following a competitive tender process, and required the appropriate franchising authority, following appropriate consultation, to publish a statement of policy setting out the circumstances in which they would exercise that power. The statements of policy that were published under RA93 reinforced the presumption in favour of franchising to the private sector (by competition where appropriate, or by means of a direct award to a private sector operator otherwise). RA93 also included provision for the appropriate franchising authority to secure services from a public sector operator, but only as a last resort where a franchise agreement was terminated or otherwise came to an end, but no further franchise agreement had been entered into in respect of the services.
- 6 Bringing the operation of passenger services back into public ownership is one element of the Government’s broader plan for the railways, which would also create a unified and simplified governance structure that places passengers at the heart of the mission, objectives and incentives for the railway. This broader plan, which is beyond the scope of this Act, would include establishing a new arm’s length public body – Great British Railways – which would be a directing mind in charge of Britain’s railway infrastructure and services.
- 7 The Government proposes to bring forward further, more extensive primary legislation to address the wider issues later in the Parliamentary session. In the meantime, the purpose of this Act is specifically to facilitate the transfer of train operations back into public ownership, in advance of that more extensive legislation.

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Legal background

- 8 The Act amends RA93 and, in limited circumstances, modifies the application of certain provisions in the 2023 Regulations. The purpose of the Act is outlined in the policy background section of these Notes. The amendments to RA93 and modified application of the regulatory requirements effected by this Act are outlined in the commentary on provisions of Act section of these Notes.
- 9 Prior to the Act, there was a duty on the Secretary of State, Welsh Ministers and Scottish Ministers as the relevant franchising authorities under RA93 to provide, or secure the provision of, railway passenger services where a franchise agreement delivering such services was terminated or otherwise came to an end, but no further franchise agreement had been entered into in respect of the services. Under section 30(1) of RA93, this duty arises in circumstances where the relevant franchise agreement is terminated for any reason whatsoever, including when it is terminated by the Secretary of State, Welsh Ministers or Scottish Ministers.
- 10 The Act amends section 30(1) of RA93 such that this duty arises simply where a franchise agreement delivering such services is terminated or otherwise comes to an end. A new section 30(1A) of RA93 provides that the Secretary of State, Welsh Ministers and Scottish Ministers may secure the provision of services for the purposes of fulfilling this duty only by making a direct award of a public service contract to a public sector company in accordance with regulation 17 of the 2023 Regulations. They are prohibited from entering into agreements with private sector franchisees under a new section 25A of RA93.
- 11 However, in a new section 30A(2) of RA93, the Act provides an exception to the duty in section 30(1) where the Secretary of State is satisfied that it will not be reasonably practicable to provide, or secure the provision of, the franchised services under section 30(1) by making a direct award to a public sector company. In this case, the Secretary of State may extend an existing franchising agreement or enter into a new franchise agreement.
- 12 The power to enter into a new franchise agreement is limited in a new section 30A(3) of RA93 such that the franchisee in relation to the new agreement must be the same person as in the existing agreement, and the term in the new agreement must begin immediately after the term of the existing agreement. Section 30A does not apply to services in respect of which Scottish Ministers and Welsh Ministers are the appropriate franchising authority as there are no current Scottish or Welsh franchise agreements with private sector franchisees.
- 13 The result of the Act is that there is now a presumption in favour of public sector companies providing railway passenger services when existing franchise agreements are terminated or come to an end, with private sector operators only engaged should the Secretary of State be satisfied that it will not be reasonably practicable to provide, or secure the provision of, the franchised services under section 30(1) of RA93 when the existing agreement comes to an end.

Territorial extent and application

- 14 This Act extends to England and Wales and Scotland.

Commentary on provisions of Act

Section 1: Prohibition on franchise extensions and new franchises

- 15 Subsection (2) removes sections 25 to 26ZA of RA93 and introduces a new section 25A. This new section prohibits appropriate franchising authorities from extending existing franchise agreements or entering into new franchise agreements.
- 16 The only exception is that, where the Secretary of State is the appropriate franchising authority, the Secretary of State may extend an existing franchise agreement or directly award a new franchise agreement to an existing franchisee under section 30A of RA93 where satisfied that it will not be reasonably practicable to provide, or secure the provision of, railway passenger services under s30(1) of RA93 by way of awarding a contract to a public sector company. This power may only be exercised in accordance with section 30B of RA93. These sections are discussed in more detail in paragraphs 21 to 26 below.
- 17 Subsection (3) amends section 23 of RA93 to provide a duty for the appropriate designating authority to designate such railway passenger services it considers “ought to be provided under section 30 to section 30C.” The amendment replaces the previous duty to designate such services as ones which “ought to be provided under franchise agreements”. It removes the presumption that such services will be provided by private sector franchisees and creates the new presumption that they will be provided by public sector companies. Services previously designated under section 23(1) of RA93 are treated as services designated under the section as amended.

Section 2: Future provision of services

- 18 Subsection (2)(a) amends section 30(1) of RA93 such that the Secretary of State, Welsh Ministers and Scottish Ministers (as the relevant franchising authorities) have a duty to provide or secure the provision of railway passenger services where a franchise agreement in respect of the services is terminated or otherwise comes to an end.
- 19 Subsection (2)(b) inserts a new section 30(1A) of RA93 which provides that the relevant franchising authority may fulfil the duty to provide, or secure the provision of, railway passenger services only by making a direct award of a public service contract to a public sector company in accordance with regulation 17 of the 2023 Regulations. New section 30(1B) of RA93 disapplies the obligation under regulation 22 of the 2023 Regulations (for the competent authority to publish notice of a direct award at least 12 months in advance) in these circumstances.
- 20 Subsection (2)(b) also inserts a new section 30(1C) of RA93 which provides that the duty in section 30(1) does not apply in respect of services being provided under the new section 30A.
- 21 Subsection (3) inserts new sections 30A to 30C of RA93. Section 30A of RA93 introduces a new, narrower power for the Secretary of State to extend existing franchise agreements or make direct awards to incumbent private sector operators to ensure continuity of passenger services only where satisfied that it will not be reasonably practicable to provide, or secure the provision of, the relevant services under section 30(1).

- 22 Direct awards made under section 30A are exempted from the 12-month notice requirement which would otherwise apply under regulation 22 of the 2023 Regulations, and the contract duration is limited to a maximum of 2 years by virtue of regulation 9(1)(b) of the 2023 Regulations.
- 23 The section 30A power is not exercisable by the Welsh Ministers or the Scottish Ministers as it is only relevant to services for which the Secretary of State is the appropriate franchising authority (these being the only services which are currently operated under franchise agreements with private sector operators).
- 24 Limitations in section 30A on the power to enter into a new franchise agreement include that the Secretary of State may only do so where the term in the new agreement begins immediately after the term of the existing agreement and the franchisee in the new agreement is the same person as the franchisee in the existing agreement. Section 30B provides that the power to extend or enter into a new franchise agreement must be exercised by means of formal agreement to extend, or by making a direct award of a public service contract, in accordance with regulation 16 of the 2023 Regulations. For the purposes of section 30B, the Secretary of State is to be treated as entitled to take emergency measures under regulation 16 regardless of whether the requirements in regulation 16(1) (that there is a disruption of services or immediate threat of the same) are met.
- 25 The Secretary of State is empowered, under section 30A(4) of RA93 to repeal sections 30A and 30B by regulations. The Secretary of State has no intention of exercising this power to repeal sections 30A and 30B until all the existing private sector franchise agreements have come to an end.
- 26 Section 30C of RA93 provides the definition of “public sector company” for the purposes of sections 30 to 30B. The definition covers companies which are: wholly owned by the Secretary of State, the Welsh Ministers or the Scottish Ministers; jointly owned by the Secretary of State and the Welsh Ministers; jointly owned by the Secretary of State and the Scottish Minister; and wholly owned subsidiaries of the same (by virtue of the definition in section 58 of the Railways Act 2005).

Section 3: Application of public sector equality duty

- 27 Section 3 amends Schedule 19 to the Equality Act 2010 (“EA10”) by inserting into it, “a public sector company providing services for the carriage of passengers by railway under a public sector contract awarded under section 30 of the Railways Act 1993”. Schedule 19 lists persons who are considered public authorities for the purpose of section 149(1) of EA10 (the public sector equality duty).
- 28 This duty requires public authorities, in the exercise of their functions, to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under EA10, (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics include age, disability gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 29 Although it is the Government’s view that the public sector equality duty already applies to publicly owned train operating companies by virtue of section 149(2) of EA10, the effect of section 3 is that it makes the application as clear as possible.

Section 4: Consequential Provision

- 30 Subsections (2) to (7) concern consequential amendments made by regulations. The Secretary of State may, by regulations, make provision that is consequential on the Act. Regulations must be made by statutory instrument. Where such regulations amend primary legislation, they are subject to the affirmative procedure. In all other cases, they are subject to the negative procedure.

Section 5: Extent, commencement and short title

- 31 The Act extends to England and Wales and Scotland and comes into force on the day it is passed.

Schedule: Consequential amendments

- 32 The concept of franchising is referenced throughout RA93. As the Act implements a shift away from private sector franchising, towards operation of designated railway passenger services by public sector companies, the Schedule includes amendments to RA93 consequential on the Act.

Commencement

- 33 The Act will come into force on the day it is passed.

Annex A – Territorial extent and application in the United Kingdom

- 34 Section 5(1) sets out the territorial extent of the Act, which describes the jurisdictions in which the Act forms part of the law. The Act extends to England and Wales and Scotland.
- 35 The main subject matter of the Act is the provision of rail passenger services. However, the Act also touches on procurement because of the modified application of the Public Service Obligations in Transport Regulations 2023. Under both the Scotland Act 1998 and the Government of Wales Act 2006, “railway services” constitute a reserved matter whereas procurement is a devolved matter. The provisions of the Act which relate to procurement also relate to railway services and are therefore outside the legislative competence of both the Scottish Parliament and the Senedd.
- 36 Although railway services are reserved, RA93 confers duties and powers on the Scottish and Welsh Ministers by making them the appropriate designating authority or the appropriate franchising authority of relevant services (see section 23 of the RA93).

Annex B – Hansard References

37 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	18 July 2024	Vol. 752 Col. 212
Second Reading	29 July 2024	Vol. 752 Col. 1071
Programme Motion	29 July 2024	Vol. 752 Col. 1141
Money Resolution	29 July 2024	Vol. 752 Col. 1141
Committee of the Whole House and Third Reading	3 September 2024	Vol. 753 Col. 194
<i>House of Lords</i>		
Introduction	4 September 2024	Vol. 839 Col. 1159
Second Reading	7 October 2024	Vol. 839 Col. 1831
Committee Stage	21, 23 & 29 October 2024	Vol. 840 Col. 427 and Vol. 840 Col. 490 Vol. 840 Col. 654 and Vol. 840 Col. 718 Vol. 840 Col. 1063
Report	6 November 2024	Vol. 840 Col. 1505
Third Reading	13 November 2024	Vol. 840 Col. 1820
<i>Subsequent stages</i>		
Programme Motion	19 November 2024	Vol. 757 Col. 179
Commons Consideration of Lords Amendments	19 November 2024	Vol. 757 Col. 180
Lords Consideration of Commons Amendments	20 November 2024	Vol. 841 Col. 219
Royal Assent	28 November 2024	House of Commons Vol. 757 Col. 954
		House of Lords Vol. 841 Col. 791

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Annex C – Progress of Bill Table

38 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended on Report in the Lords
				Clause 1
Section 1	Clause 1	Clause 1	Clause 1	Clause 2
Section 2	Clause 2	Clause 2	Clause 2	Clause 3
Section 3				Clause 4
Section 4	Clause 3	Clause 3	Clause 3	Clause 5
Section 5	Clause 4	Clause 4	Clause 4	Clause 6
Schedule	Schedule	Schedule	Schedule	Schedule

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