



Greater London Authority Act 1999

1999 CHAPTER 29

PART IV **U.K.**

TRANSPORT

CHAPTER VII **E+W+S**

PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

Introductory

210 PPP agreements. **E+W+S**

- (1) For the purposes of this Chapter a public-private partnership agreement (referred to as a PPP agreement) is a contract in the case of which the conditions set out in the following provisions of this section are satisfied.
- (2) At least one of the parties to the contract must be a relevant body for the purposes of this Chapter, that is to say—
 - (a) London Regional Transport;
 - (b) Transport for London; or
 - (c) a subsidiary of London Regional Transport or Transport for London.
- (3) The contract must be one which involves—
 - (a) the provision, construction, renewal, or improvement, and
 - (b) the maintenance,of a railway or proposed railway and, if or to the extent that the contract so provides, of any stations, rolling stock or depots used or to be used in connection with that railway.
- (4) The railway or proposed railway must be one which—
 - (a) belongs or will belong to, or to a subsidiary of, London Regional Transport or Transport for London, or

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- (b) is being provided, constructed, renewed or improved under the contract for, or for a subsidiary of, London Regional Transport or Transport for London.
- (5) If a party who undertakes to carry out or secure the carrying out of any or all of the work mentioned in subsection (3) above (a PPP company) is a public sector operator at the time when the contract is made, that party must no longer be a public sector operator on the day following the expiration of the period of six weeks beginning with the day on which the condition in subsection (6) below is satisfied.
- (6) The contract must be one which is, or is of a description which is, designated as a PPP agreement.

211 Public sector operators. **E+W+S**

- (1) In this Chapter public sector operator means—
- (a) any Minister of the Crown, government department or other emanation of the Crown;
 - (b) any local authority;
 - (c) any metropolitan county passenger transport authority;
 - (d) any body corporate whose members are appointed by a Minister of the Crown, a government department, a local authority or a metropolitan county passenger transport authority or by a body corporate whose members are so appointed;
 - (e) a company—
 - (i) a majority of whose issued shares are held by or on behalf of any of the bodies or persons falling within paragraphs (a) to (d) above;
 - (ii) in which the majority of the voting rights are held by or on behalf of any of those bodies or persons;
 - (iii) a majority of whose board of directors can be appointed or removed by any of those bodies or persons; or
 - (iv) in which the majority of the voting rights are controlled by any of those bodies or persons, pursuant to an agreement with other persons;
 - (f) a subsidiary of a company falling within paragraph (e) above.
- (2) Expressions used in sub-paragraphs (i) to (iv) of subsection (1)(e) above and in section 736 of the ^{M1}Companies Act 1985 have the same meaning in those sub-paragraphs as they have in that section.

Marginal Citations

M1 1985 c. 6.

212 PPP designations. **E+W+S**

- (1) Any designation for the purposes of subsection (6) of section 210 above (a PPP designation) must be made in a direction issued by the appropriate authority.
- (2) A PPP designation must—
- (a) describe the subject matter of the contracts to which it relates;
 - (b) describe the parties to those contracts; and

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- (c) if made before one or more of those contracts has been entered into, state a time by which a contract must have been entered into if it is to be a PPP agreement by virtue of the designation.
- (3) The time stated pursuant to paragraph (c) of subsection (2) above must not be later than three months after the date of the direction containing the designation.
- (4) A PPP designation may be made before or after the making of any contract to which it relates.
- (5) A contract shall not be a PPP agreement by virtue of a PPP designation made after the making of the contract, except with the consent of the parties to the contract.
- (6) For the purposes of subsection (1) above the appropriate authority means—
- (a) as respects any direction issued before the transfer date, the Secretary of State; and
 - (b) as respects any direction issued on or after that date, the Mayor.

Key system assets

213 Key system assets. E+W+S

- (1) In this Chapter, key system assets means—
- (a) any property, rights or liabilities which are, or are of a description, designated by a relevant body as key system assets in a PPP agreement as originally made; and
 - (b) any property, rights or liabilities which are designated, or are of a description designated, by a relevant body after the making of a PPP agreement as key system assets in accordance with the terms of, or by an amendment made to, the PPP agreement,
- but does not include any property, rights or liabilities which, in accordance with the terms of, or by an amendment made to, the PPP agreement, have for the time being ceased to be designated as key system assets.
- (2) No rights or liabilities under contracts of employment shall be designated as key system assets.

214 Register of key system assets. E+W+S

- (1) The relevant authority shall keep a register of all key system assets for the time being, except as provided by subsection (3) below.
- (2) The register shall state—
- (a) the date on which any designation of a particular key system asset, or of a description of key system assets, was made; and
 - (b) sufficient details of any particular key system asset, or any description of key system assets, designated as such to enable the key system assets to be identified.
- (3) The register need not contain an entry in respect of any particular key system asset or description of key system assets if the relevant authority, with the consent of the PPP company concerned, keeps the requisite copy documents available for inspection by the public at all reasonable hours free of charge.

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- (4) For the purposes of this section the requisite copy documents, in the case of any particular key system asset or description of key system assets, are copies of—
- (a) the document which contains the designation under paragraph (a) or (b) of section 213(1) above, and
 - (b) such other documents (if any) as may be necessary to disclose the information which would (apart from subsection (3) above) be required to be stated in the register,
- or of such extracts from those documents as disclose the designation or, as the case may be, the information concerned.
- (5) The register shall be available for inspection by the public free of charge at all reasonable hours.
- (6) A person inspecting the register, or any requisite copy documents available for inspection under subsection (3) above, may make copies of, or of extracts from, the register or requisite copy documents.

215 Related third party agreements. E+W+S

- (1) Where a PPP agreement is or has been entered into, the powers of the relevant authority include power to enter into and carry out other agreements with other persons in connection with the PPP agreement, whether or not there is any term in the PPP agreement relating to such other agreements.
- (2) Where—
- (a) a PPP agreement is or has been entered into, and
 - (b) the PPP company or the relevant authority, or a subsidiary of the PPP company or relevant authority, enters into arrangements with another person (a PPP related third party)—
 - (i) which do not constitute a PPP agreement, but
 - (ii) which involve the provision of property or rights for use for the purposes of or otherwise in connection with the PPP agreement,
 subsection (3) below applies.
- (3) Where this subsection applies, the relevant authority, or a subsidiary of the relevant authority, may enter into an agreement with the PPP related third party for the purpose of enabling the property or rights in question to be designated as, and to be, key system assets as if—
- (a) the agreement between the relevant authority or subsidiary and the PPP related third party were a PPP agreement, and
 - (b) the PPP related third party were the PPP company under that agreement.

216 Protection of key system assets. E+W+S

- (1) If and to the extent that key system assets are property or rights, a PPP company shall not, without the consent of the relevant authority,—
- (a) transfer or agree to transfer, or create or agree to create any security over, any of those key system assets or any interest in, or right over, any of those key system assets; or
 - (b) create or extinguish, or agree to create or extinguish, any interest in, or right over, any of those key system assets.

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- (2) If and to the extent that key system assets are liabilities, a PPP company shall not, without the consent of the relevant authority, enter into any agreement under which any such liability is released or discharged or transferred to some other person.
- (3) Any transaction which is entered into in contravention of subsection (1) or (2) above shall be void.
- (4) No execution or other legal process may be commenced or continued, and no distress may be levied, against any property which is, or rights which are, key system assets.
- (5) Where a PPP agreement makes provision for or in connection with the transfer to a successor body at any time—
 - (a) of any shares in a PPP company, or
 - (b) of any key system assets,the relevant authority shall ensure that the PPP agreement includes provision specifying, or providing for the determination of, the amounts which are to be paid in respect of those shares or key system assets.
- (6) In subsection (5) above, successor body means—
 - (a) a relevant body;
 - (b) a PPP company; or
 - (c) a PPP related third party.
- (7) Any reference in this section to a PPP company or PPP related third party includes a reference to a body or person which has been or is to be such a company or party.
- (8) In this section security has the meaning given by section 248(b) of the ^{M2}Insolvency Act 1986.

Marginal Citations

M2 1986 c. 45.

VALID FROM 15/07/2003

217 Schemes for the transfer of key system assets. **E+W+S**

- (1) Transport for London may make schemes for the transfer of key system assets from any body falling within subsection (2) below to any other such body.
- (2) Those bodies are—
 - (a) Transport for London;
 - (b) any subsidiary of Transport for London;
 - (c) any PPP company;
 - (d) any PPP related third party.
- (3) A scheme under this section shall not take effect unless and until it has been approved by the Mayor.
- (4) The transfers which may be made by virtue of a scheme under this section include transfers taking effect before, on or after the expiration of the term of the PPP

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agreement or PPP related third party agreement by reference to which the transferor or transferee under the scheme falls within subsection (2) above.

- (5) No scheme under this section for the transfer of key system assets from or to—
- (a) a PPP company, or
 - (b) a PPP related third party,
- may be made otherwise than in accordance with the terms of the PPP agreement or PPP related third party agreement by reference to which the PPP company or PPP related third party falls within subsection (2) above.
- (6) In this section—
- (a) any reference to key system assets includes a reference to property, rights or liabilities which have been or are to be such assets; and
 - (b) any reference to a PPP company or PPP related third party includes a reference to a body or person which has been or is to be such a company or party.
- (7) Schedule 12 to this Act (which makes further provision in relation to schemes under this section) shall have effect.

Land

218 PPP leases. **E+W+S**

- (1) In this Chapter PPP lease means any lease—
- (a) which constitutes a PPP agreement;
 - (b) which is entered into in accordance with a PPP agreement; or
 - (c) which is designated as a PPP lease.
- (2) An instrument containing a PPP lease must also contain, or have endorsed upon it, a certificate—
- (a) signed by or on behalf of the parties to the lease, and
 - (b) stating that the instrument contains a PPP lease.
- (3) Any designation for the purposes of paragraph (c) of subsection (1) above shall be made by the same person, and in the same manner, as if it were a PPP designation.
- (4) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of an agreement between a relevant body and a PPP company as to the terms on which land which is the subject of a PPP lease is provided.
- (5) Accordingly no such enactment or rule of law applies in relation to the rights and obligations of the parties to a PPP lease—
- (a) so as to exclude or modify in any respect any of the rights and obligations of those parties under the terms of the PPP lease, whether with respect to the termination of the tenancy or any other matter;
 - (b) so as to confer or impose on any party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the PPP lease, in addition to any such right or obligation provided for by the terms of the PPP lease;

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- (c) so as to restrict the enforcement (whether by action for damages or otherwise) by any party to the PPP lease of any obligation of any other party under the PPP lease.

- (6) In this section lease includes an underlease and an agreement for a lease or underlease.

219 Land registration and PPP leases. **E+W+S**

- (1) The ^{M3}Land Registration Act 1925 shall be amended in accordance with the following provisions of this section.
- (2) In section 3 (interpretation) after paragraph (xviii) there shall be inserted—
“(xviiiia) PPP lease has the same meaning as in Chapter VII of Part IV of the Greater London Authority Act 1999 (public-private partnership agreements).”
- (3) In section 8(2) (restriction on registering leasehold land held under a lease containing a prohibition or restriction on dealings inter vivos) at the beginning there shall be inserted “ Leasehold land held under a PPP lease shall not be registered under this Act; and, subject to that, ”.
- (4) In section 19 (registration of disposition of freeholds) in paragraph (a) of the proviso to subsection (2) (exception for leases not exceeding twenty-one years) after twenty-one years there shall be inserted “ or of a PPP lease ”.
- (5) In section 22 (registration of dispositions of leaseholds) in paragraph (a) of the proviso to subsection (2) (exception for underleases not exceeding twenty-one years) after twenty-one years there shall be inserted “ or of an underlease which is a PPP lease ”.
- (6) Any interest in land consisting of a PPP lease shall, unless registered or otherwise entered on the register, be an overriding interest for the purposes of the ^{M4}Land Registration Act 1925; but the registrar shall not be required by virtue of section 70(2) or (3) of that Act to enter any note or notice of any such lease, or of any claim to any such lease, in the register.
- (7) Accordingly, in section 70 (overriding interests)—
(a) in subsection (1), after paragraph (k) there shall be inserted the following paragraph—
“(kk) PPP leases;” and
(b) after subsection (3) there shall be inserted the following subsection—
“(3A) Neither subsection (2) nor subsection (3) of this section shall apply in the case of a PPP lease.”
- (8) In section 123 (compulsory registration: dispositions to which requirement to register applies) in subsection (6) (interpretation) the word and immediately preceding paragraph (c) shall be omitted and at the end of that paragraph there shall be added “; and
(d) term of years absolute does not include a PPP lease”.

Marginal Citations

M3 1925 c. 21.

M4 1925 c. 21.

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Insolvency

220 Meaning and effect of PPP administration orders. **E+W+S**

- (1) A PPP administration order is an order of the court made in accordance with section 221, 222 or 223 below in relation to a PPP company and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the court,—
 - (a) for the achievement of the purposes of such an order; and
 - (b) in a manner which protects the respective interests of the members and creditors of the company.
- (2) The purposes of a PPP administration order made in relation to any company shall be—
 - (a) the transfer to another company, or (as respects different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the relevant activities may be properly carried on; and
 - (b) the carrying on of those relevant activities pending the making of the transfer.
- (3) Schedule 14 to this Act shall have effect for applying provisions of the ^{M5}Insolvency Act 1986 where a PPP administration order is made.
- (4) Schedule 15 to this Act shall have effect for enabling provision to be made with respect to cases in which, in pursuance of a PPP administration order, another company is to carry on all or any of the relevant activities of a PPP company in place of that company.
- (5) Without prejudice to paragraph 20 of Schedule 14 to this Act, the power conferred by section 411 of the ^{M6}Insolvency Act 1986 to make rules shall apply for the purpose of giving effect to the PPP administration order provisions of this Act as it applies for the purpose of giving effect to Parts I to VII of that Act, but taking any reference in that section to those Parts as a reference to those provisions.
- (6) For the purposes of this Chapter, the relevant activities, in relation to a PPP company, are the activities carried out, or to be carried out, by that company in performing its obligations under the PPP agreement to which it is party.
- (7) In this section—

business and property have the same meaning as they have in the ^{M7}Insolvency Act 1986;

the court, in the case of any PPP company, means the court having jurisdiction to wind up the company;

the PPP administration order provisions of this Act means this section, sections 221 to 224 below and Schedules 14 and 15 to this Act.

Marginal Citations

M5 1986 c. 45.

M6 1986 c. 45.

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M7 1986 c. 45.

221 PPP administration orders made on special petitions. **E+W+S**

- (1) If, on an application made to the court by petition presented by the Mayor, the court is satisfied that either or both of the grounds specified in subsection (2) below is satisfied in relation to that PPP company, the court may make a PPP administration order in relation to that company.
- (2) The grounds mentioned in subsection (1) above are, in relation to any company,—
 - (a) that the company is or is likely to be unable to pay its debts;
 - (b) that, in a case in which the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the company under section 124A of the 1986 Act (petition by the Secretary of State following inspectors' report etc), it would be just and equitable, as mentioned in that section, for the company to be wound up.
- (3) Notice of any petition under this section for a PPP administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the 1986 Act; and no such petition shall be withdrawn except with the leave of the court.
- (4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a PPP administration order in relation to any company as they apply on the hearing of a petition for an administration order.
- (5) Subsections (1), (2), (4) and (5) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a PPP administration order in relation to any company as if—
 - (a) the reference in subsection (1) to an administration order were a reference to a PPP administration order; and
 - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver).
- (6) For the purposes of this section a company is unable to pay its debts if—
 - (a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
 - (b) it is an unregistered company, within the meaning of Part V of the 1986 Act, which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).
- (7) The functions of the Mayor under this section may be exercised by Transport for London acting as his agent, and where Transport for London so acts references to the Mayor shall be construed accordingly.
- (8) In this section—

the 1986 Act means the ^{M8}Insolvency Act 1986;
the court has the same meaning as in section 220 above.

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Marginal Citations

M8 1986 c. 45.

222 Restriction on making winding-up order. **E+W+S**

- (1) Where a petition for the winding up of a PPP company is presented by a person other than the Mayor, the court shall not make a winding-up order in relation to that company on that petition unless—
 - (a) notice of the petition has been served on the Mayor; and
 - (b) a period of at least fourteen days has elapsed since the service of that notice.
- (2) Where a petition for the winding up of a PPP company has been presented, the Mayor may, at any time before a winding-up order is made on the petition, make an application to the court for a PPP administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 221(1) above, make a PPP administration order instead of a winding-up order.
- (3) Where, on a petition for the winding up of a PPP company, the court makes, or proposes to make, a PPP administration order by virtue of subsection (2) above, subsections (4) and (5) of section 9 of the ^{M9}Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that petition as they apply on the hearing of a petition for an administration order.
- (4) In this section the court has the same meaning as in section 220 above.

Marginal Citations

M9 1986 c. 45.

223 Restrictions on voluntary winding-up etc. **E+W+S**

- (1) No resolution for voluntary winding up shall be passed by a PPP company without leave of the court granted on an application made for the purpose by the company.
- (2) No such leave shall be granted unless—
 - (a) notice of the application has been served on the Mayor; and
 - (b) a period of at least fourteen days has elapsed since the service of that notice.
- (3) Where an application for leave under subsection (1) above has been made by a PPP company, the Mayor may, at any time before leave has been granted under subsection (1) above, make an application to the court for a PPP administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 221(1) above, make a PPP administration order instead of granting leave under subsection (1) above.
- (4) Where, on an application for leave under subsection (1) above, the court makes, or proposes to make, a PPP administration order by virtue of subsection (3) above, subsections (4) and (5) of section 9 of the ^{M10}Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that application as they apply on the hearing of a petition for an administration order.

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- (5) No administration order under Part II of the ^{M11}Insolvency Act 1986 shall be made in relation to a PPP company unless—
- (a) notice of the application for the order has been served on the Mayor; and
 - (b) a period of at least fourteen days has elapsed since the service of that notice.
- (6) Where an application for an administration order under Part II of the ^{M12}Insolvency Act 1986 has been made in the case of a PPP company, the Mayor may, at any time before such an order has been made on that application, make an application to the court for a PPP administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 221(1) above, make a PPP administration order instead of an administration order under Part II of the ^{M13}I solvency Act 1986.
- (7) No step shall be taken by any person to enforce any security over a PPP company's property, except where that person has served fourteen days' notice of his intention to take that step on the Mayor.
- (8) In this section—
- the court has the same meaning as in section 220 above;
 - resolution for voluntary winding up has the same meaning as in the ^{M14}Insolvency Act 1986;
 - security and property have the same meaning as in the ^{M15}Insolvency Act 1986.

Marginal Citations

- M10 1986 c. 45.
- M11 1986 c. 45.
- M12 1986 c. 45.
- M13 1986 c. 45.
- M14 1986 c. 45.
- M15 1986 c. 45.

224 Meaning of company and application of provisions to unregistered, foreign and other companies. **E+W+S**

- (1) In the PPP administration order provisions of this Act—
- company means—
 - (a) any company formed and registered under the ^{M16}Companies Act 1985 or any existing company within the meaning given in section 735(1) of that Act; and
 - (b) any unregistered company; and
- unregistered company has the meaning given in Part V of the 1986 Act.
- (2) In the application of section 220(1) above in a case where the PPP company there mentioned is a foreign company, the reference to the affairs, business and property of the company shall be taken as a reference to the affairs and business of the company, so far as carried on in Great Britain, and the property of the company within Great Britain.

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- (3) In the application of section 9(5) of the 1986 Act by virtue of subsection (4) of section 221 above or subsection (3) of section 222 above where the petition mentioned in the subsection in question relates to a company which is a foreign company, the reference to restricting the exercise of any powers of the directors or of the company shall be taken as a reference to restricting—
- (a) the exercise within Great Britain of the powers of the directors or of the company; or
 - (b) any exercise of those powers so far as relating to the affairs, business or property of the company in Great Britain.
- (4) In the application of provisions in section 10 of the 1986 Act by virtue of subsection (5) of section 221 above where the company mentioned in that subsection is a foreign company—
- (a) paragraph (a) of subsection (1) shall be omitted;
 - (b) any reference in paragraph (b) or (c) of that subsection to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain;
 - (c) in paragraph (c) of that subsection—
 - (i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and
 - (ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales; and
 - (d) any reference in subsection (2) to an administrative receiver shall be taken to include a reference to any person performing, in relation to the foreign company, functions equivalent to those of an administrative receiver, within the meaning of section 251 of the 1986 Act.
- (5) Subsections (1) to (4) of section 223 above shall not have effect in relation to a PPP company which is a foreign company.
- (6) In the application of subsection (7) of that section where the PPP company there mentioned is a foreign company, the reference to the company's property shall be taken as a reference to such of its property as is for the time being situated in Great Britain.
- (7) In this section—
- the 1986 Act means the ^{M17}Insolvency Act 1986;
 - foreign company means a company incorporated outside Great Britain;
 - the PPP administration order provisions of this Act means sections 220 to 223 above, this section and Schedules 14 and 15 to this Act.

Marginal Citations

M16 1985 c. 6.

M17 1986 c. 45.

Status: Point in time view as at 12/01/2000. This version of this chapter contains provisions that are not valid for this point in time.

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The PPP arbiter

225 The PPP arbiter. E+W+S

- (1) The Secretary of State may appoint a person to an office to be known as the Public-Private Partnership Agreement Arbiter (in this Chapter referred to as the PPP arbiter).
- (2) The PPP arbiter shall have the functions conferred or imposed on him by or under this Act.
- (3) The PPP arbiter shall be a corporation sole by the name of the Public-Private Partnership Agreement Arbiter.
- (4) If at any time no person holds the office of PPP arbiter, the Secretary of State shall appoint a person to that office if requested in writing to do so by a party to a PPP agreement.
- (5) A request under subsection (4) above must not include a request for a particular person to be appointed.
- (6) Before making an appointment under subsection (1) or (4) above, the Secretary of State shall consult such persons as he considers appropriate concerning—
 - (a) the person to be appointed; and
 - (b) the terms of the appointment.
- (7) The office of PPP arbiter may not be held by—
 - (a) the Mayor;
 - (b) an Assembly member;
 - (c) the Authority or a member of staff of the Authority;
 - (d) Transport for London or a subsidiary of Transport for London;
 - (e) a member of Transport for London or a director of a subsidiary of Transport for London;
 - (f) a member of staff of Transport for London or of a subsidiary of Transport for London; or
 - (g) a director or employee of a PPP company or of a subsidiary of a PPP company or of a company of which a PPP company is a subsidiary.

226 Terms of appointment. E+W+S

- (1) A person appointed to be the PPP arbiter shall be appointed for such term as may be specified or described in the instrument appointing him and shall hold and vacate office as the PPP arbiter in accordance with the terms of his appointment.
- (2) There shall be paid to the PPP arbiter such remuneration, and such travelling and other allowances, as the Secretary of State may determine.
- (3) There shall be paid such pension, allowance or gratuity to or in respect of the PPP arbiter, or such contributions or payments towards provision for such a pension, allowance or gratuity, as the Secretary of State may determine.
- (4) A person may resign from office as the PPP arbiter at any time by giving notice to the Secretary of State.
- (5) The Secretary of State may remove a person from office as the PPP arbiter—

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- (a) on the ground of incapacity or misbehaviour; or
- (b) where the Secretary of State considers that there has been unreasonable delay in the discharge of the functions of the PPP arbiter.

227 Staff. E+W+S

- (1) The PPP arbiter may appoint such staff as he may determine, subject to any restrictions contained in the terms of his appointment.
- (2) The staff of the PPP arbiter shall be appointed on such terms and conditions as he shall determine, subject to any restrictions contained in the terms of his appointment.
- (3) Any function of the PPP arbiter may be exercised by any member of his staff authorised for the purpose by him or, if there is no person who holds the office of PPP arbiter, by the Secretary of State whether specially or generally.

228 Same person as PPP arbiter and Rail Regulator: duties of staff. E+W+S

- (1) If at any time the offices of Rail Regulator and PPP arbiter are held by the same person, subsections (2) and (3) below shall apply until such time as those offices are next held by different persons.
- (2) Where this subsection applies, any member of the Rail Regulator's staff may (in addition to discharging duties of that employment) be required also to discharge duties as if he were a member of the PPP arbiter's staff of similar status.
- (3) Where this subsection applies, any member of the PPP arbiter's staff may (in addition to discharging duties of that employment) be required also to discharge duties as if he were a member of the Rail Regulator's staff of similar status.
- (4) Subsections (2) and (3) above apply notwithstanding anything in the terms or conditions of employment of the member of staff concerned.

229 Directions of the PPP arbiter. E+W+S

- (1) A PPP agreement may provide for matters of any description specified in the agreement to be referred to the PPP arbiter.
- (2) A party to a PPP agreement may refer to the PPP arbiter for direction any matter of a description specified in a provision of that agreement by virtue of subsection (1) above.
- (3) Where a matter is referred under this section to the PPP arbiter for direction he—
 - (a) shall give a direction in relation to that matter; and
 - (b) may give a direction in relation to any other matter which is ancillary or incidental to the matter referred.
- (4) The directions that may be given under subsection (3) above include directions relating to the inclusion of new terms in, or the variation of existing terms of, the PPP agreement in question.
- (5) The PPP arbiter shall give notice of any direction under subsection (3) above to the parties to the PPP agreement in question.
- (6) A direction under subsection (3) above shall be final and binding—
 - (a) on the parties to the PPP agreement in question, and

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(b) on any persons claiming through or under those parties, and shall, if and to the extent that the notice given under subsection (5) above so provides, take effect as a term of the PPP agreement.

(7) Where a direction has been given under subsection (3) above, the parties to the PPP agreement in question may jointly agree that subsection (6) above is not to have effect in relation to that direction.

230 Guidance by the PPP arbiter. E+W+S

(1) Any matter relating to a PPP agreement may be referred to the PPP arbiter for consideration by him—

- (a) by all the parties to the PPP agreement acting jointly, if they so agree; or
- (b) by any party to the PPP agreement.

(2) Where a matter is referred by virtue of subsection (1) above to the PPP arbiter for consideration he shall consider the matter and—

- (a) if the matter was referred under paragraph (a) of that subsection, shall give to the parties who referred the matter such guidance as he considers appropriate; or
- (b) if the matter was referred under paragraph (b) of that subsection, may give to the parties to the PPP agreement such guidance as he considers appropriate.

(3) The guidance which may be given by the PPP arbiter by virtue of subsection (2) above includes guidance about any matter which he considers relevant to the PPP agreement in question.

(4) Where the PPP arbiter has given any guidance under this section in relation to a matter which is subsequently referred to him for direction under subsection (3) of section 229 above, the direction which may be given by the PPP arbiter under that subsection is not restricted by that guidance.

231 Duty of the PPP arbiter. E+W+S

(1) In giving in relation to a PPP agreement—

- (a) any direction under section 229(3) above, or
- (b) any guidance under section 230(2) above,

the PPP arbiter shall act in the way he considers best calculated to achieve the objectives specified in subsections (2) to (5) below.

(2) The objective specified in this subsection is to ensure that an opportunity to review and amend the requirements imposed, or proposed to be imposed, on a PPP company by or under the PPP agreement in question is afforded to the appropriate relevant body if, in the opinion of the PPP arbiter, the proper price for the performance of those requirements exceeds the resources which that relevant body has notified to the PPP arbiter that it has, or expects to have, available for the purpose.

In this subsection appropriate relevant body means a relevant body which is a party to the PPP agreement and is to pay the price under the agreement.

(3) The objective specified in this subsection is to promote efficiency and economy—

- (a) in the provision, construction, renewal, or improvement, as the case may be, and

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- (b) in the maintenance,
of the railway infrastructure to which the PPP agreement in question relates.
- (4) The objective specified in this subsection is to ensure that any rate of return incorporated in the PPP agreement in question would, in the opinion of the PPP arbiter,
—
- (a) taking into account such matters as may be specified in the PPP agreement,
and
- (b) leaving out of account such other matters as may be so specified,
be earned by a company which is efficient and economic in its performance of the requirements imposed on the PPP company by or under the PPP agreement.
- (5) The objective specified in this subsection is to enable any PPP company which is a party to the PPP agreement in question to plan the future performance of the agreement with reasonable certainty.
- (6) In giving any such direction or guidance as is mentioned in subsection (1) above the PPP arbiter is to take account of any factors which—
- (a) are notified to him by the parties to the PPP agreement in question, acting jointly, as factors to which he must have regard when giving the direction or guidance in question, or
- (b) are factors specified or described in the PPP agreement in question as factors to which the PPP arbiter must have regard in giving any direction under section 229(3) above or any guidance under section 230(2) above.
- (7) For the purposes of subsection (4) above, a rate of return is incorporated in a PPP agreement if, and only if, the PPP agreement—
- (a) contains provision specifying, or for determining, the rate of return which the PPP company in question might reasonably expect to earn; and
- (b) states that subsection (4) above is to have effect in relation to that provision.
- (8) In this section railway infrastructure means the railway or proposed railway in question and includes a reference to any stations, rolling stock or depots used or to be used in connection with that railway.

232 Further powers. **E+W+S**

- (1) For the purposes of the proper discharge of the functions conferred or imposed on him by or under this Act, the PPP arbiter may—
- (a) carry out inspections of such of the railway infrastructure or equipment belonging to, or under the control of, any party to a PPP agreement as he considers appropriate;
- (b) consult such bodies or persons as he considers appropriate in relation to any direction or guidance given or proposed to be given by him;
- (c) do all such things as he considers appropriate for or in connection with the giving of a direction under section 229(3) above or guidance under section 230(2) above; and
- (d) do such other things as he considers necessary or expedient.
- (2) The powers conferred on the PPP arbiter by this section and section 233 below are exercisable for purposes preparatory or ancillary to the giving of directions or guidance under this Chapter generally and notwithstanding that there is no matter in relation

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to which a direction under section 229(3) above, or guidance under section 230(2) above, is required.

(3) In this section railway infrastructure has the same meaning as in section 231 above.

233 Provision of information to the PPP arbiter. E+W+S

(1) Any person falling within subsection (2) below shall, at the request of the PPP arbiter, provide him with such information as the PPP arbiter considers relevant to the proper discharge of the functions conferred or imposed on him by or under this Act and as may be specified or described in the request.

(2) The persons who fall within this subsection are—

- (a) any party to a PPP agreement;
- (b) any associate of a party to a PPP agreement; and
- (c) any PPP related third party.

(3) The information shall be provided in such form and manner, and within such time, as may be specified in the request.

(4) A person is not obliged by virtue of this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.

(5) For the purposes of subsection (2)(b) above, associate, in relation to a party to a PPP agreement, means—

- (a) a parent undertaking of that party;
- (b) a subsidiary undertaking of any parent undertaking of that party;
- (c) a subsidiary undertaking of that party; or
- (d) an undertaking in which that party, or any undertaking falling within paragraphs (a) to (c) above, has a participating interest.

(6) For the purposes of subsection (5) above—

parent undertaking and subsidiary undertaking shall be construed in accordance with section 258 of the ^{M18}Companies Act 1985;
undertaking has the meaning given by section 259 of that Act; and
participating interest has the meaning given by section 260 of that Act.

Marginal Citations

M18 1985 c. 6.

234 Failure to provide information to PPP arbiter. E+W+S

(1) If a person fails to comply with a request under section 233(1) above, the PPP arbiter may serve a notice on that person requiring him—

- (a) to produce to the PPP arbiter, at a time and place specified in the notice, any documents which are specified or described in the notice and are in his custody or under his control; or
- (b) to provide to the PPP arbiter, at a time and place and in the form and manner specified in the notice, such information as may be specified or described in the notice.

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- (2) No person shall be required under this section—
- (a) to produce any documents which he could not be compelled to produce in civil proceedings in the court; or
 - (b) in complying with any requirement for the provision of information, to provide any information which he could not be compelled to give in evidence in any such proceedings.
- (3) A person who intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under subsection (1) above is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
- (4) If a person makes default in complying with a notice under subsection (1) above, the court may, on the application of the PPP arbiter, make such order as the court thinks fit for requiring the default to be made good.
- (5) Any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (6) In this section—
- (a) any reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and
 - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (7) In this section the court means the High Court.

235 **Restrictions on disclosure of information.** E+W+S

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
- (a) has been obtained by the PPP arbiter under or by virtue of any of the provisions of this Chapter, and
 - (b) relates to the affairs of any individual or to any particular business,
- shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) above does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the carrying out by the Secretary of State, the Mayor of London, Transport for London or the PPP arbiter of any of his or, as the case may be, its functions under this Act;
 - (b) for the purpose of facilitating the carrying out by the Secretary of State, the Rail Regulator, the Franchising Director, the Competition Commission or the Mayor of any of his or, as the case may be, its functions under the ^{M19}Railways Act 1993;
 - (c) for the purpose of facilitating the carrying out by—
 - (i) any Minister of the Crown,
 - (ii) the Director General of Fair Trading,

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- (iii) the Competition Commission,
 - (iv) the Director General of Telecommunications,
 - (v) the Director General of Gas Supply,
 - (vi) the Director General of Water Supply,
 - (vii) the Director General of Electricity Supply,
 - (viii) the Civil Aviation Authority,
 - (ix) the Insolvency Practitioners Tribunal, or
 - (x) a local weights and measures authority in Great Britain,
- of any of his or, as the case may be, its functions under any of the enactments or instruments specified in subsection (3) below;
- (d) for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any powers conferred by the ^{M20}Financial Services Act 1986 or by the enactments relating to companies, insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed under the enactments relating to companies to carry out his functions;
 - (e) for the purpose of enabling or assisting an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the ^{M21}Insolvency Act 1986 to carry out its functions as such;
 - (f) for the purpose of facilitating the carrying out by the Health and Safety Commission or the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the ^{M22}Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;
 - (g) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;
 - (h) for the purpose of facilitating the carrying out by the International Rail Regulator of any of his functions under any subordinate legislation made for the purpose of implementing—
 - (i) the Directive of the Council of the European Communities dated 29th July 1991 on the development of the Community’s railways; or
 - (ii) Council Directive [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees;
 - (j) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (k) for the purposes of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments specified in subsection (3) below; or
 - (l) in pursuance of a Community obligation.
- (3) The enactments and instruments referred to in subsection (2) above are—
- (a) the ^{M23}Trade Descriptions Act 1968;
 - (b) the ^{M24}Fair Trading Act 1973;
 - (c) the ^{M25}Consumer Credit Act 1974;
 - (d) the ^{M26}Restrictive Trade Practices Act 1976;
 - (e) the ^{M27}Resale Prices Act 1976;
 - (f) the ^{M28}Estate Agents Act 1979;
 - (g) the ^{M29}Competition Act 1980;
 - (h) the ^{M30}Telecommunications Act 1984;

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- (j) the ^{M31}Airports Act 1986;
 - (k) the ^{M32}Gas Act 1986;
 - (l) the ^{M33}Insolvency Act 1986;
 - (m) the ^{M34}Consumer Protection Act 1987;
 - (n) the ^{M35}Electricity Act 1989;
 - (o) the ^{M36}Property Misdescriptions Act 1991;
 - (p) the ^{M37}Water Industry Act 1991;
 - (q) the ^{M38}Water Resources Act 1991;
 - (r) the ^{M39}Railways Act 1993;
 - (s) any subordinate legislation made for the purpose of securing compliance with the Directive of the Council of the European Communities dated 10th September 1984 on the ^{M40}approximation of the laws, regulations and administrative provisions of the member States concerning misleading advertising.
- (4) The Secretary of State may by order provide that subsections (2) and (3) above shall have effect subject to such modifications as are specified in the order.
- (5) The prohibition imposed by subsection (1) above shall be enforceable by civil proceedings—
- (a) by the individual mentioned in that subsection, or
 - (b) by the person for the time being carrying on the business there mentioned, for an injunction or for any other appropriate relief or remedy.
- (6) In this section the Franchising Director means the Director General of Passenger Rail Franchising.

Commencement Information

- II** [S. 235](#) wholly in force at 12.1.2000; by virtue of s. 425(2) the Act comes into force at Royal Assent in regards to any power of a Minister of the Crown to make regulations or an order; [s. 235](#) in force at 12.1.2000 by [S.I. 1999/3434](#), [art. 2](#)

Marginal Citations

- M19** 1993 c. 43.
M20 1986 c. 60.
M21 1986 c. 45.
M22 1974 c. 37.
M23 1968 c. 29.
M24 1973 c. 41.
M25 1974 c. 39.
M26 1976 c. 34.
M27 1976 c. 53.
M28 1979 c. 38.
M29 1980 c. 21.
M30 1984 c. 12.
M31 1986 c. 31.
M32 1986 c. 44.
M33 1986 c. 45.
M34 1987 c. 43.
M35 1989 c. 29.

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M36 1991 c. 29.
M37 1991 c. 56.
M38 1991 c. 57.
M39 1993 c. 43.
M40 84/450/EEC

236 Immunity. E+W+S

- (1) The PPP arbiter is not liable for anything done or omitted in the discharge or purported discharge of his functions as the PPP arbiter unless the act or omission is shown to have been in bad faith.
- (2) Subsection (1) above applies to a member of the staff of, or an agent of, the PPP arbiter as it applies to the PPP arbiter.

237 Expenses. E+W+S

- (1) The following expenses, namely—
 - (a) any sums payable by virtue of section 226(2) or (3) above, and
 - (b) any expenses duly incurred by the PPP arbiter or by any staff of the PPP arbiter,shall be defrayed by the Secretary of State.
- (2) A relevant body which is a party to a PPP agreement shall pay to the Secretary of State, at such times as he may direct, such sums as the Secretary of State may determine in respect of expenses defrayed by the Secretary of State under subsection (1) above.
- (3) A PPP agreement may provide that sums paid by a relevant body by virtue of subsection (2) above, or any portion of such sums as may be specified or described in the PPP agreement, may be recovered by the relevant body from a PPP company which is a party to the PPP agreement.
- (4) Where a PPP agreement includes provision by virtue of subsection (3) above making any sum recoverable by a relevant body, the directions which may be given under section 229(3) above include directions varying the amount so recoverable.
- (5) Sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

Miscellaneous and supplementary

238 Statutory undertakers. E+W+S

Where, by virtue of a PPP agreement, statutory functions relating to a railway are exercisable by a PPP company, the PPP company shall, as respects any matter arising from the carrying out of the subject-matter of the PPP agreement, be taken to be authorised by an enactment to carry on a railway undertaking.

239 Interpretation of Chapter VII. E+W+S

- (1) In this Chapter, unless the context otherwise requires—

key system assets has the meaning given by section 213(1) above;

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locomotive means any railway vehicle which has the capacity for self-propulsion (whether or not the power by which it operates is derived from a source external to the vehicle);

PPP agreement has the meaning given by section 210 above;

PPP arbiter shall be construed in accordance with section 225(1) above;

PPP company shall be construed in accordance with section 210(5) above;

PPP designation shall be construed in accordance with section 212(1) above;

PPP lease has the meaning given by section 218 above;

PPP related third party shall be construed in accordance with section 215(2) (b) above;

PPP related third party agreement means any arrangements falling within section 215(2)(b) above;

premises includes any land, building or structure;

public sector operator has the meaning given by section 211 above;

railway has the meaning given in section 67(1) of the ^{M41}Transport and Works Act 1992;

railway vehicle includes anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along a railway;

the relevant authority means—

(a) as respects any time before the transfer date, London Regional Transport; and

(b) as respects any time on or after that date, Transport for London;

relevant body has the meaning given by section 210(2) above (that is to say, London Regional Transport, Transport for London or a subsidiary of London Regional Transport or Transport for London);

rolling stock means any carriage, wagon or other vehicle used on a railway and includes a locomotive;

station means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes;

the transfer date means the date on which London Underground Limited becomes a subsidiary of Transport for London;

vehicle includes a railway vehicle.

(2) Any reference in this Chapter to a railway includes a reference to any stretch of track comprised in a railway.

Marginal Citations

M41 1992 c. 42.

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