



Crossrail Act 2008

2008 CHAPTER 18

Railway matters

22 Objective of ORR in relation to Crossrail

- (1) The list of objectives in section 4(1) of the Railways Act 1993 (c. 43) (objectives of Office of Rail Regulation and Secretary of State) shall be treated, in relation to the Office of Rail Regulation only, as including the objective of facilitating the construction of Crossrail.
- (2) The Office of Rail Regulation shall consult the Secretary of State about the duty under section 4(1) of the Railways Act 1993 (c. 43) (as modified by subsection (1)).
- (3) This section shall cease to have effect on such day as the Secretary of State may by order made by statutory instrument specify.
- (4) A statutory instrument containing an order under subsection (3) shall be laid before Parliament after being made.

23 Duty of ORR to publish reports

- (1) The Office of Rail Regulation shall from time to time publish a report on—
 - (a) what it has done, or proposes to do, to further the objective given to it under section 22;
 - (b) how it has exercised or proposes to exercise its functions in connection with the operation of Crossrail passenger services.
- (2) The Office of Rail Regulation shall publish a report under subsection (1) if at any time the Secretary of State requires it to do so.
- (3) The Office of Rail Regulation shall have regard to a report under this section in the exercise of any of its functions to which that report is relevant.
- (4) In this section, “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 the railway mentioned in section 1(1)(a).

- (5) This section shall cease to have effect on such day as the Secretary of State may by order made by statutory instrument specify.
- (6) A statutory instrument containing an order under subsection (5) shall be laid before Parliament after being made.

24 Licensing

- (1) Section 6(1) of the Railways Act 1993 (which prohibits any person from acting as the operator of a railway asset unless authorised by a licence under section 8 of that Act) shall not apply in relation to—
 - (a) any network constructed in exercise of the powers conferred by this Act which is not yet ready for commercial use, or
 - (b) any train being used on any such network.
- (2) For the purposes of subsection (1)(a), a network shall be taken to be ready for commercial use only if the Secretary of State has laid before Parliament notice of his determination that it is ready for such use.
- (3) Any expression used in this section and Part 1 of the Railways Act 1993 has the same meaning in this section as it has in that Part.

25 Award of Crossrail franchises to public-sector operators

- (1) Section 25 of the Railways Act 1993 (c. 43) (public-sector operators not to be franchisees) does not apply in relation to the franchisee in respect of a franchise agreement—
 - (a) which relates wholly or mainly to the provision of one or more Crossrail passenger services, or
 - (b) which relates wholly or mainly to the provision of one or more other services for the carriage of passengers by railway where—
 - (i) the services run wholly or partly on the route of Crossrail, and
 - (ii) the services are likely to be subject to substantial disruption because of the construction of Crossrail.
- (2) The following may in particular be taken into account in determining whether, for the purposes of subsection (1)(b), services are likely to be subject to substantial disruption—
 - (a) the frequency with which the services are likely to be disrupted;
 - (b) the duration of the period in which the services are likely to be disrupted (and, in particular, its duration relative to the length of the franchise term);
 - (c) the severity of any likely disruption.
- (3) In this section—
 - “Crossrail passenger service” has the meaning given by section 23(4);
 - “franchisee”, “franchise agreement” and “franchise term” have the meanings given by section 23 of the Railways Act 1993 (designated passenger services to be provided under franchise agreements).

26 Disapplication of franchising and access exemptions

- (1) The Secretary of State may by order amend, or revoke provisions of, the Heathrow Express Order—
 - (a) for the purpose of restricting or ending an exemption granted by a relevant provision,
 - (b) for the purpose of adding to the conditions subject to which such an exemption is granted, or
 - (c) for the purpose of making such a condition more onerous.
- (2) For the purposes of subsection (1), each of the following is a “relevant provision”—
 - article 3(1) of the Heathrow Express Order, and
 - article 4(1) of the Heathrow Express Order.
- (3) Where exercise of the power under subsection (1) has effect to end an exemption granted by article 3(1) of the Heathrow Express Order in relation to any track, station or depot, the Secretary of State may by order—
 - (a) make provision for, or in connection with, treating as void—
 - (i) every access contract, including one entered into before the making of the order, where the permission concerned is permission to use that facility, or
 - (ii) a contract such as is mentioned in sub-paragraph (i) if it is specified in the order or is of a description so specified;
 - (b) provide for exceptions to any provision made under paragraph (a).
- (4) The powers—
 - (a) under subsection (1), so far as relating to an exemption granted by article 3(1) of the Heathrow Express Order, and
 - (b) under subsection (3)(a),are exercisable only for the purpose of, or for purposes that include, facilitating Crossrail passenger services.
- (5) The powers under subsection (1), so far as relating to an exemption granted by article 4(1) of the Heathrow Express Order, are exercisable only for, or for purposes that include, either or both of the following—
 - (a) facilitating Crossrail passenger services, and
 - (b) enabling Crossrail passenger services to be designated under section 23(1) of the Railways Act 1993 (c. 43) (services which ought to be provided under franchise agreements).
- (6) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
 - “the Heathrow Express Order” means the Railways (Heathrow Express) (Exemptions) Order 1994 (S.I. 1994/574), as from time to time amended;
 - “access contract” has the meaning given by section 17(6) of the Railways Act 1993;
 - “Crossrail passenger service” has the meaning given by section 23(4).

27 Closures

- (1) If the Secretary of State considers that discontinuance falling within any of the closure provisions of the Railways Act 2005 is necessary or expedient because of the operation of Crossrail or the carrying out of any of the works authorised by this Act, he may direct that those provisions shall be treated as not applying to it.
- (2) The reference in subsection (1) to the closure provisions of the Railways Act 2005 is to—
 - sections 22 to 25 (discontinuance of railway passenger services),
 - sections 26 to 28 (discontinuance of operation of passenger networks),
 - sections 29 to 31 (discontinuance of use or operation of stations), and
 - section 37 (discontinuance of experimental passenger services).

28 Key system assets

- (1) Section 216(1)(b) of the Greater London Authority Act 1999 (c. 29) (consent of Transport for London required for creation etc. of interests in, or rights over, assets designated as key system assets in connection with certain railway-related public-private partnership agreements) shall not apply in relation to—
 - (a) the creation of an interest in, or right over, a key system asset, or
 - (b) an agreement to create an interest in, or right over, a key system asset,if the interest or right is, or is to be, created in order to facilitate any of the matters mentioned in subsection (2).
- (2) Those matters are—
 - (a) the construction of the railway mentioned in section 1(1)(a);
 - (b) the maintenance of that railway;
 - (c) the operation of services for the carriage of passengers or goods by railway on a line the whole of which, or part of which, forms part of that railway.
- (3) In this section “key system asset” has the meaning given by section 213(1) of the Greater London Authority Act 1999 (c. 29).

29 Power to designate persons as “protected railway companies”

- (1) The Secretary of State may, with the consent of a company to which this subsection applies, by order make provision for the company to be treated as a protected railway company for the purposes of Part 1 of the Railways Act 1993 (c. 43).
- (2) Subsection (1) applies to a company if—
 - (a) it is a private sector operator and it has, for the time being, the management of a railway facility that is or is part of, or is associated with, the railway mentioned in section 1(1)(a), or
 - (b) it is a private sector operator and it owns, or has rights in relation to, such a railway facility.
- (3) The power to make an order under subsection (1) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section “private sector operator” and “railway facility” have the same meanings as in Part 1 of the Railways Act 1993.

30 Duty to co-operate

- (1) Where the nominated undertaker considers that a matter affects—
 - (a) the construction, maintenance or operation of Crossrail, and
 - (b) the construction, maintenance or operation of a railway asset which is not a Crossrail asset,it may by notice in writing require a controller of the asset to enter into an agreement with it about how the matter is to be dealt with.
- (2) Where a controller of a railway asset which is not a Crossrail asset considers that a matter affects—
 - (a) the construction, maintenance or operation of the asset, and
 - (b) the construction, maintenance or operation of Crossrail,it may by notice in writing require the nominated undertaker to enter into an agreement with it about how the matter is to be dealt with.
- (3) The terms of an agreement under subsection (1) or (2) shall be such as the nominated undertaker and the controller of the asset may agree or, in default of agreement, as may be determined by arbitration.
- (4) For the purposes of subsections (1) and (2), a railway asset is a Crossrail asset if—
 - (a) in the case of a railway asset consisting of any network, station or light maintenance depot, it is comprised in Crossrail, and
 - (b) in the case of a railway asset consisting of any train being used on a network, the network is comprised in Crossrail.
- (5) Subsections (1) and (2) do not apply in relation to—
 - (a) a matter which pursuant to any enactment must or may be dealt with by the Office of Rail Regulation, or
 - (b) a matter relating to an agreement which pursuant to any provision of that or any other agreement must or may be dealt with by the Office of Rail Regulation.
- (6) In this section—

“controller”, in relation to a railway asset, means—

 - (a) the person having the management of the asset for the time being, or
 - (b) a person who owns, or has rights in relation to, the asset;

“light maintenance depot”, “network”, “railway asset” and “station” have the same meanings as in Part 1 of the Railways Act 1993 (c. 43).

31 Arbitration after referral under section 30(3)

- (1) This section applies where a difference is referred under section 30(3) to arbitration.
- (2) The parties must notify the Secretary of State of the referral without delay after the commencement of the arbitral proceedings.
- (3) The Secretary of State may, on request or otherwise, direct the arbitrator as to results that are to be achieved by the agreement for which terms are to be determined by the arbitration.

- (4) A direction under subsection (3) may be made even though the making of the direction affects the outcome of proceedings to which the Secretary of State himself, or a body in which he has an interest, is a party.
- (5) A request for a direction under subsection (3) may be made by the arbitrator (as well as by a party).
- (6) For the purpose of determining whether or not the arbitrator has to comply with a direction under subsection (3), the rule is that he must comply with the direction in determining terms of the agreement if the direction—
 - (a) is relevant to the determination of those terms, and
 - (b) is given to him before he has made his award determining those terms.
- (7) For the purpose of determining what the arbitrator has to do to comply with a direction under subsection (3) with which he has to comply, the rule is that he must carry out his function of determining terms of the agreement so as to secure, so far as is reasonably practicable, that the results concerned are achieved by the agreement.

32 Arbitration under section 30(3): multiple proceedings

- (1) The Secretary of State may, on request or otherwise, direct—
 - (a) that a group of proceedings is to be consolidated, or
 - (b) that concurrent hearings are to be held in a group of proceedings.
- (2) In subsection (1) “group of proceedings” means a group consisting of—
 - (a) section 30(3) proceedings, and
 - (b) any one or more of the following—
 - (i) other section 30(3) proceedings,
 - (ii) arbitral proceedings related to the proceedings mentioned in paragraph (a), and
 - (iii) arbitral proceedings related to section 30(3) proceedings that are to be consolidated with the proceedings mentioned in paragraph (a).
- (3) A request for a direction under subsection (1) may be made by the arbitrator or any of the arbitrators (as well as by a party).
- (4) A direction under subsection (1) shall specify the terms on which the proceedings are to be consolidated or on which concurrent hearings are to be held.
- (5) Where a direction under subsection (1) provides for the consolidation of proceedings that do not all have the same arbitrator, the terms that may be specified in the direction include (in particular)—
 - (a) terms specifying the person who is to be the arbitrator in the consolidated proceedings;
 - (b) terms under which that person is to be determined.
- (6) For the purposes of this section—
 - (a) “section 30(3) proceedings” means proceedings on arbitration of a difference referred under section 30(3), and
 - (b) arbitral proceedings are “related” to section 30(3) proceedings if—
 - (i) the arbitral proceedings are not section 30(3) proceedings,

- (ii) at least one of the parties to the arbitral proceedings is also a party to the section 30(3) proceedings, and
- (iii) the Secretary of State considers that the subject-matter of the arbitral proceedings is connected with the subject-matter of the section 30(3) proceedings.

33 Transfer of functions relating to works

- (1) If the Secretary of State acquires any land for the purposes of this Act from a railway operator and there are situated on the land works authorised by statute, he may by order provide for the transfer to himself, or to a person specified under section 39, of any statutory power or duty relating to the works previously exercisable by the railway operator.
- (2) The Secretary of State may by order provide for the further transfer to himself, or to a person specified under section 39, of a power or duty transferred under subsection (1) or this subsection.
- (3) If a railway operator acquires from the Secretary of State any land on which there are situated works authorised by this Act, the Secretary of State may, with the consent of the railway operator, by order provide for the transfer to the railway operator of any duty under this Act relating to the works.
- (4) An order under this section may contain such supplementary, incidental, consequential or transitional provision as the Secretary of State considers necessary or expedient in connection with the order.
- (5) In subsections (1) and (3), references to a railway operator are to a person who has the management for the time being of any network, station or light maintenance depot.
- (6) In this section, “light maintenance depot”, “network” and “station” have the same meanings as in Part 1 of the Railways Act 1993 (c. 43).

34 Application of section 122 of the Railways Act 1993

For the purposes of section 122 of the Railways Act 1993 (under which availability of the defence of statutory authority depends on the operator of a railway asset being the holder of a licence under section 8 of that Act or having the benefit of a licence exemption) a person who has the benefit of exemption under section 24(1) shall be treated as having the benefit of an exemption granted under section 7 of that Act.

35 Application of other railway legislation

Schedule 11 (application of railway legislation) has effect.