



Greater London Authority Act 1999

1999 CHAPTER 29

PART IV

TRANSPORT

CHAPTER VII

PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

The PPP arbiter

225 The PPP arbiter

- (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.

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- (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

- (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—
 - (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

- (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

- (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.

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- (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

- (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
 - (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

- (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

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- (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

- (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
 - (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

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- (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

- (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 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

- (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.

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- (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 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.

234 Failure to provide information to PPP arbiter

- (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.
- (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—

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- (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

- (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 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,
 - (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 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 Insolvency Act 1986 to carry out its functions as such;

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- (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 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 Trade Descriptions Act 1968;
 - (b) the Fair Trading Act 1973;
 - (c) the Consumer Credit Act 1974;
 - (d) the Restrictive Trade Practices Act 1976;
 - (e) the Resale Prices Act 1976;
 - (f) the Estate Agents Act 1979;
 - (g) the Competition Act 1980;
 - (h) the Telecommunications Act 1984;
 - (j) the Airports Act 1986;
 - (k) the Gas Act 1986;
 - (l) the Insolvency Act 1986;
 - (m) the Consumer Protection Act 1987;
 - (n) the Electricity Act 1989;
 - (o) the Property Misdescriptions Act 1991;
 - (p) the Water Industry Act 1991;
 - (q) the Water Resources Act 1991;
 - (r) the 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 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.

236 Immunity

- (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

- (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.