

Provision of Rail Passenger Services (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

- 1 Circumstances where rail passenger services to be deemed to be provided more economically and efficiently if provided otherwise than under a franchise agreement
- 2 Circumstances where Scottish Ministers to operate rail passenger services
- 3 Effect of Act upon other obligations of Scottish Ministers to issue tenders
- 4 Calculating the length of time Scottish Ministers are to run rail passenger services
- 5 Orders
- 6 Interpretation
- 7 Commencement and saving
- 8 Short title

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 78-EN. A Policy Memorandum is printed separately as SP Bill 78-PM.

Provision of Rail Passenger Services (Scotland) Bill

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An Act of the Scottish Parliament to direct the Scottish Ministers as to how they shall exercise the powers conferred upon them by the Railways Act 1993 as amended by the Railways Act 2005 in relation to the provision of rail passenger services; and for connected purposes.

5 **1 Circumstances where rail passenger services to be deemed to be provided more economically and efficiently if provided otherwise than under a franchise agreement**

10 (1) In exercise of their powers as the appropriate franchising authority under section 26ZA(1)(b) of the Railways Act 1993 (hereinafter referred to as “the 1993 Act”), the Scottish Ministers shall consider that rail passenger services would be provided more economically and efficiently if they were provided otherwise than under a franchise agreement if either subsection (2) or (3) applies.

(2) This subsection applies where all tenders submitted under Part 1 of the 1993 Act are framed on the basis that—

15 (a) the franchised service shall be run for profit; or

(b) the franchise operator intends to pay dividends or similar emoluments from the franchise turnover or profit to shareholders, directors or any relevant stakeholder.

(3) This subsection applies where all tenders submitted under the relevant sections of the 1993 Act are framed in such terms that the Scottish Ministers could operate the service at an equivalent or better standard with the same revenue or less.

20 (4) Subsection (3) applies even where a tender is framed in such a way that the Scottish Ministers could not conclude that rail passenger services would be provided more economically and efficiently by operation of subsection (2).

2 Circumstances where Scottish Ministers to operate rail passenger services

(1) Where the Scottish Ministers—

25 (a) consider that the provision of rail passenger services shall be provided more economically and efficiently if they were provided otherwise than under a franchise agreement by operation of section 1 of this Act; or

(b) receive no tenders under Part 1 of the 1993 Act,
subsection (2) applies.

(2) The Scottish Ministers shall—

(a) decide not to seek to secure the provision of the services under a franchise agreement in terms of section 26ZA(2)(c) of the 1993 Act; and

(b) shall provide services for the carriage of passengers themselves in terms of section 30 of the 1993 Act,

for a period of 7 years.

(3) The Scottish Ministers may vary the time period in subsection (2) by order but may not reduce the period to less than 4 years.

3 Effect of Act upon other obligations of Scottish Ministers to issue tenders

Nothing in this Act shall affect—

(a) any obligation on the Scottish Ministers to issue new invitations to tender under Part 1 of the 1993 Act; or

(b) any other provision which serves to limit the length of time the Scottish Ministers may act as operator of last resort,

subject to the provisions of section 1 of this Act.

4 Calculating the length of time Scottish Ministers are to run rail passenger services

Where the Scottish Ministers provide rail passenger services by operation of this Act for consecutive periods—

(a) each period shall be deemed separate; and

(b) the duration of two or more periods shall not be accumulated together,

for the purpose of calculating the length of time the Scottish Ministers have operated rail passenger services for the purpose of section 2 of this Act or any other enactment.

5 Orders

(1) Any order made by the Scottish Ministers under this Act is to be made by statutory instrument.

(2) Any order under section 2(3) shall not be made unless a draft has been laid before and approved by resolution of the Scottish Parliament.

6 Interpretation

In this Act—

“appropriate franchising authority” has the meaning given to it by the 1993 Act;

“economically and efficiently” shall be construed in accordance with section 1 of this Act;

“economically and efficiently if they were provided otherwise than under a franchise agreement” shall be construed in accordance with section 1 of this Act;

5 “enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation (within the meaning of the Northern Ireland Act 1998) and an enactment comprised in subordinate legislation, and includes an enactment comprised in, or in subordinate legislation under, an Act of Parliament or European Directive, whenever passed or made;

“franchise agreement” has the meaning given to it by the 1993 Act;

“franchise operator” has the meaning given to it by the 1993 Act;

10 “franchise turnover or profit” means all forms of income to franchised service and franchise operator including without prejudice to that generality turnover, revenue, subsidy or profit;

“franchised service” means rail passenger services provided by a franchise operator pursuant to a franchise agreement.

7 **Commencement and saving**

(1) This Act shall come into force on 1 June 2007.

15 (2) The provisions of this Act are without prejudice to any franchise agreement entered into before this Act came into force.

8 **Short title**

This Act may be cited as the Provision of Rail Passenger Services (Scotland) Act 2007.

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An Act of the Scottish Parliament to direct the Scottish Ministers as to how they shall exercise the powers conferred upon them by the Railways Act 1993 as amended by the Railways Act 2005 in relation to the provision of rail passenger services; and for connected purposes.

Introduced by: Tommy Sheridan
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