
TO BE EXECUTED AS A DEED

**SUBCONTRACTING OF OPERATOR OF LAST RESORT SERVICES
AGREEMENT**

SECRETARY OF STATE FOR TRANSPORT (1)

and

WELSH MINISTERS (2)

THIS SUBCONTRACTING OF OPERATOR OF LAST RESORT SERVICES AGREEMENT is dated 2018

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** whose principal address is Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
 - (2) **WELSH MINISTERS** whose principal place of business is Crown Building, Cathays Park, Cardiff, CF10 3NQ ("**Welsh Ministers**") (including, as appropriate, Affiliates or subsidiaries of Welsh Ministers acting on its behalf),
- each a "Party" and together the "Parties".

WHEREAS:

- (A) A Transfer of Functions Order under section 58(1) of the Government of Wales Act 2006 ("**TFO**") was made on 23 May 2018 to transfer certain Secretary of State franchising functions under the Act and the Railways Act 2005 (the "**Railways Acts**") in order for Welsh Ministers to be the franchising authority in respect of the Welsh component of Welsh services and Wales-only services. The Secretary of State remains the franchising authority over English services insofar as they are specified in the Welsh franchise agreement.
- (B) One of the functions of a franchising authority is the duty to secure the continued operation of passenger rail services pursuant to Section 30 of the Act (**Section 30 duties**). The TFO provides that Welsh Ministers will have powers to exercise their Section 30 duties in respect of the Welsh component of the Welsh services and Wales only services as of 02:00 on 14 October 2018 (the **Transfer of OLR Functions Date**). The Secretary of State will remain the franchising authority under the Act for the English services.
- (C) Welsh Ministers will have Section 30 duties in respect of the Welsh component of Welsh services, Wales only services and any future Wales-only franchise agreements, as of the Transfer of OLR Functions Date, regardless of whether the Current Franchise Agreement has been extended, or the Welsh franchise agreement has commenced operation. For the purposes of this Agreement only, the Current Franchise Agreement and the Welsh franchise agreement shall be referred to as the "**W&B Franchise**".
- (D) The Section 30 duties of the Secretary of State in respect of English services will not transfer to Welsh Ministers under the TFO. However, the Secretary of State will

appoint Welsh Ministers as his agent to exercise the Secretary of State's duties under Section 30 of the Act in respect of the English services pursuant to Agency Agreement no. 3. Until such time as Welsh Ministers acquire the capability to exercise duties under Section 30 of the Act, it has been agreed that Welsh Ministers will procure the performance of duties under Section 30 of the Act (the "OLR Services") from the Secretary of State pursuant to the terms of this Agreement.

- (E) This Agreement has been prepared to help clarify the scope and approach to proposals that Welsh Ministers will procure OLR Services from the Secretary of State. Further, in time should Welsh Ministers acquire their own capability to exercise duties under Section 30 of the Act in respect of the Welsh component of Welsh services and Wales-only services, this Agreement shall be terminated and the Parties will enter into new contractual arrangements in relation to Welsh Ministers' performance (acting as agent of the Secretary of State under Agency Agreement no.3) of the Secretary of State's duties under Section 30 of the Act in respect of the English services.

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise,
- (a) the definitions set out in the Definitions Agreement shall apply; and
 - (b) words and expressions defined in the Welsh franchise agreement have the same meanings when used in this Agreement.
- 1.2 Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender.
- 1.3 References to any statute or statutory provision shall include: (i) any subordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification), whether made before or after the date of this Agreement.
- 1.4 References to any relevant franchising authority, franchisee, franchise agreement or invitation to tender in this agreement are used as they are the terms used in the Railways Acts.

2 COMMENCEMENT VARIATION AND DURATION

- 2.1 The provisions of this Agreement shall commence, take effect and be binding on each of the Secretary of State and Welsh Ministers on and from the Transfer of OLR Functions

Date and shall continue in force until the expiry of the Welsh franchise agreement, unless otherwise terminated earlier by mutual written consent of the Parties, for instance because Welsh Ministers have acquired the capability to exercise duties under Section 30 of the Act themselves in respect of the Welsh component of Welsh services and Wales-only services. In such circumstances it is proposed that the Parties will enter into new contractual arrangements in relation to Welsh Ministers' performance (acting as agent of the Secretary of State under Agency Agreement no.3) of the Secretary of State's duties under Section 30 of the Act in respect of the English services.

- 2.2 This Agreement shall be reviewed by the Parties in the event that the Current Franchise Agreement is extended and Welsh Ministers become the franchising authority for the Welsh component of Welsh services and Wales-only services under the TFO. In such circumstances, the Parties will consider if there are any provisions in the Joint Parties' Agreement which would assist the Parties to manage their respective duties under Section 30 of the Act for the duration of any extension.
- 2.3 Otherwise, the Parties shall be entitled to review and amend this Agreement, provided that any amendment shall be in writing and agreed by both Parties.

3 OTHER RELATED AGREEMENTS

- 3.1 The Parties acknowledge their respective rights and obligations under:
- (a) this Agreement;
 - (b) Agency Agreement no. 3;
 - (c) the Funding and Outputs Agreement; and
 - (d) subject to such agreement being entered into, the Co-operation & Collaboration Agreement,

which (together with the Definitions Agreement) comprise the "**Wales & Borders Agreements**".

4 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 4.1 Each Party undertakes that it shall not at any time during this Agreement disclose to any person any confidential information concerning the activities, business, affairs or suppliers of the other Party, except as permitted by this Clause 4.
- 4.2 Each Party may disclose the other Party's confidential information:

-
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement and under the Act provided that it ensures that the employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 4;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
- (c) where at the time of its disclosure, the confidential information is already in the public domain other than by a breach of this Agreement.

4.3 No Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

4.4 Nothing in this Agreement shall prevent the Secretary of State or Welsh Ministers from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 any term or condition or information contained in or relating to this Agreement.

4.5 Each Party shall co-operate with the other Party and supply all necessary information and documentation required in connection with any request received under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and/or the Secretary of State's publication scheme requirements under the Freedom of Information Act 2000.

5 CURRENT SECRETARY OF STATE OLR ARRANGEMENTS

5.1 The Secretary of State has contracts in place with OLR Advisers, for the provision of OLR Services. The OLR Services are more fully described in Clause 10. OLR Advisers' contracts were let under the Secretary of State's STAR framework in November 2015 for a period of 2 years. The OLR Advisers' contracts have been extended to May 2018 after which replacement OLR Advisers contracts will be let. Any OLR Advisers appointed by the Secretary of State will be competent and experienced to perform the OLR Services.

6 PROVISION OF OLR SERVICES TO WELSH MINISTERS - SUMMARY

6.1 From the Transfer of OLR Functions Date, the Secretary of State agrees to provide the following OLR Services to Welsh Ministers in respect of the W&B Franchise:

-
- (a) review of periodic reports provided by Welsh Ministers on the financial status, operational performance and franchising status of the W&B Franchise by the OLR Advisers;
 - (b) 'deep dives' of the W&B Franchise, if so requested by Welsh Ministers;
 - (c) provision of rail industry experts. OLR Advisers and senior interim managers in the event that Welsh Ministers and the Secretary of State, in respect of the W&B Franchise, are obliged to exercise their Section 30 duties; and
 - (d) use of Secretary of State shelf companies to establish the appropriate corporate framework.

6.2 Appended to this Agreement at Annex A is the Secretary of State's Section 30 Handbook (the "**Handbook**"). The Handbook is a working document for those involved in the termination of passenger rail franchises and the mobilisation of a new franchise by the Secretary of State. The Handbook describes the activities that a franchising authority needs to undertake to ensure the seamless continuity of railway passenger services in the event that a franchising authority is obliged to exercise Section 30 duties.

7 PROVISION OF OLR SERVICES TO WELSH MINISTERS – OLR REPORTS

7.1 Financial management information and performance reports (the "**franchise information**") will be provided a periodic basis by Welsh Ministers to the Secretary of State for use by its OLR Advisers as required.

7.2 If Welsh Ministers are unable to provide the franchise information in the form required to the Secretary of State, Welsh Ministers will:

- (a) provide the raw financial and performance data to the Secretary of State; and
- (b) nominate officials to receive training on how to provide the franchise information in the form required by the Secretary of State or his OLR Advisers and the Secretary of State will procure that this training is delivered to Welsh Ministers' nominated officials.

8 PROVISION OF OLR SERVICES TO WELSH MINISTERS – DEEP DIVES

8.1 The Secretary of State shall procure that his OLR Advisers review, on a quarterly basis, or at such other frequency as the Parties may agree, whether a Deep Dive of the W&B Franchise is required. On the advice of the OLR Advisers, and where agreed between the Parties, the Parties will instruct the OLR advisers to undertake Deep Dives into the W&B Franchise either on a risk basis or as part of a rolling programme.

9 PROVISION OF OLR SERVICES TO WELSH MINISTERS – OLR COMPANY ARRANGEMENTS

- 9.1 The Secretary of State will procure that the OLR Advisers set up two OLR companies, one to act as a holding company, the other to act as the operating company. The operating company will hold all the relevant railway operating licences.
- 9.2 Alternatively, if Welsh Ministers wish at any time, they can set up two shelf companies, or purchase one of the Secretary of State's shelf companies that have been set up for OLR purposes.
- 9.3 The Secretary of State will procure that the OLR Advisers assist Welsh Ministers in determining the best company structure to assist Welsh Ministers in meeting their duties under Section 30 of the Act.

10 PROVISION OF OLR SERVICES TO WELSH MINISTERS – EXERCISE OF SECTION 30 DUTIES

- 10.1 Should a potential procurement or Franchisee failure be identified, subject to Welsh Ministers and the Secretary of State agreeing, the Secretary of State shall procure that the OLR Advisers:
- (a) undertake a full due diligence exercise. The OLR Advisers will prepare a draft business plan that sets out the OLR Advisers' plans for the W&B Franchise and any subsequent exit strategy;
 - (b) support Welsh Ministers in pre-mobilisation negotiations with the Franchisee and other key suppliers;
 - (c) undertake Safety case and operational licence preparation;
 - (d) carry out a commercial contract review which may include:
 - (i) identifying onerous clauses or liabilities in any third party Key Contracts that the OLR Advisers would not recommend that Welsh Ministers step into as part of any Direct Agreement arrangements; and
 - (ii) confirming that contracts are capable of inclusion in a statutory transfer scheme;
 - (e) undertake business planning and budget setting with the Franchisee;
 - (f) undertake planning to ensure the continuity of the train services. This will include the provision of experts with the following technical expertise:

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- (i) timetabling;
 - (ii) train planning;
 - (iii) rail asset management;
 - (iv) contract management;
 - (v) rail IT;
 - (vi) rolling stock expertise;
 - (vii) marketing, branding and de-branding;
 - (viii) HR services and management of the TUPE and pensions transfer process; and
- (g) report accordingly to Welsh Ministers.

10.2 In the event that Section 30 of the Act is triggered and Welsh Ministers and the Secretary of State are obliged to secure the continued operation of franchised passenger services under the W&B Franchise, Welsh Ministers:

- (a) will provide standby directors with suitable skills and experience who would be available at short notice to step in and manage a holding company. The directors would include individuals who could act as chief executive officer, finance officer and suitably qualified non-executive directors; and
- (b) agree that if the OLR Advisers provide any senior interim managers to an operating subsidiary of the Welsh Ministers holding company, e.g. an interim Managing Director and interim Finance Director, it is not anticipated that those senior interim managers would transfer to any successor operator as part of any TUPE process.

10.3 The OLR Advisers will undertake the following activities:

- (a) project management services;
- (b) senior support to Welsh Ministers;
- (c) internal termination team management;
- (d) business review; and
- (e) employee consultation, supplier and stakeholder management.

10.4 The OLR Advisers have prepared the Handbook to provide guidance in the event that the OLR Advisers are required to assist Welsh Ministers and the Secretary of State in exercising their duties under Section 30 of the Act. A copy of the Handbook is appended to this Agreement at Annex A.

10.5 Where the Secretary of State considers that the OLR Advisers should be instructed under this Clause 10, and Welsh Ministers disagree on the appointment or any terms of reference, the Parties will raise the matter at the Joint Strategic Board or any other appropriate forum at which there is senior representation by both Parties.

11 COMMISSIONING OLR ADVISERS

11.1 Where Welsh Ministers identify OLR advice that needs to be commissioned under this Agreement, Welsh Ministers will outline the scope of their requirements to the Secretary of State, who will then seek an estimate from the OLR Adviser(s) for this advice. The OLR Adviser's estimate(s) will be agreed in writing by Welsh Ministers before any advice is commissioned.

11.2 The OLR Advisers will provide the Secretary of State with invoices for advice that has been commissioned on behalf of Welsh Ministers. The Secretary of State will confirm with Welsh Ministers that the invoices are acceptable to Welsh Ministers before paying the invoice(s). The Secretary of State will then raise an invoice for Welsh Ministers to reimburse the Secretary of State for the cost of the advice and Welsh Ministers will pay the Secretary of State by means of a DEL transfer.

11.3 Where the Secretary of State considers that the OLR Advisers should be instructed to provide OLR advice, and Welsh Ministers disagree, the Parties will raise the matter at the Joint Strategic Board, or any other forum at which there is senior representation by both Parties.

12 COSTS

12.1 OLR costs, to be agreed, which will be paid by Welsh Ministers, include the following:

- (a) OLR Adviser costs;
- (b) provision of reporting services; and
- (c) training Welsh Minister's officers in the production of OLR Reports. Cost to include travel and subsistence and Welsh Ministers will provide a suitable venue for training.

12.2 The provision of OLR Services is charged on a time, materials and disbursements basis. Current call off rates for the Secretary of State's OLR Advisers and worked examples of

the costs the Secretary of State has previously incurred in exercising his duties under Section 30 of the Act have been provided to Welsh Ministers.

12.3 The Secretary of State will not reimburse Welsh Ministers for any costs Welsh Ministers incur in exercising duties under Section 30 of the Act over the W&B Franchise. For the avoidance of doubt, this includes any costs incurred in securing the continued provision of English services.

12.4 In the event of any dispute between Welsh Ministers and the Secretary of State concerning OLR Adviser costs the dispute mechanism as set out in Clause 9 of Agency Agreement no. 3 shall be available to the Parties.

13 FUTURE OLR AGENCY ARRANGEMENTS

13.1 These arrangements will continue until such time as Welsh Ministers acquire the capability to exercise duties under Section 30 of the Act without the assistance of the Secretary of State's OLR Advisers and the Parties have agreed to enter into a new contractual arrangement in relation to Welsh Ministers' performance (acting as agent of the Secretary of State under Agency Agreement no.3) of the Secretary of State's duties under Section 30 of the Act in respect of the English services.

14 FURTHER ASSURANCE

14.1 Each Party agrees to use all reasonable endeavours to do or procure to be done all such further acts and execute or procure the execution of all such documents as any other Party may from time to time reasonably require for the purpose of giving the other Party the full benefit of the provisions of this Agreement.

15 GOVERNING LAW AND JURISDICTION

15.1 This Agreement, and any non-contractual obligations arising out of or in connection with it, its subject matter and formation, shall be governed by and construed in accordance with the laws of England and Wales and, subject to the use of the Dispute resolution procedure set out in Clause 9 of Agency Agreement no. 3 the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any Disputes (including any non-contractual Disputes) which may arise out of or in connection with this Agreement.

16 THIRD PARTY RIGHTS

16.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

17 COUNTERPARTS

17.1 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original and such counterparts or duplicates shall together constitute one and the same Agreement.

18 NO AGENCY OR PARTNERSHIP

18.1 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party the agent of any other Party.

18.2 Neither Party shall act or describe itself as the agent of any other Party, nor shall it make or represent that it has authority to make any commitments on the behalf of any other Party except where expressly so permitted under Agency Agreement no. 3.

19 NO DELEGATION

19.1 No provision of this Agreement shall be construed as a delegation by any of the Parties of any of their respective functions or authority to any Party.

20 LEGALLY BINDING

20.1 The Parties agree that this Agreement shall be fully legally binding between the Parties.

21 STATUTORY POWERS

21.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of each of the Parties in the exercise of their respective functions as may be amended, supplemented or increased from time to time and the rights, powers, duties and obligations of each of the Parties pursuant to their respective functions may be as fully and effectually exercised as if this Agreement had not been made.

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year first before written.

The Secretary of State

The corporate seal of the
SECRETARY OF STATE FOR TRANSPORT
hereto affixed is authenticated by:



.....
Authenticated by authority of the
Secretary of State for Transport

Welsh Ministers

Executed as a deed by applying the seal of Welsh Ministers.

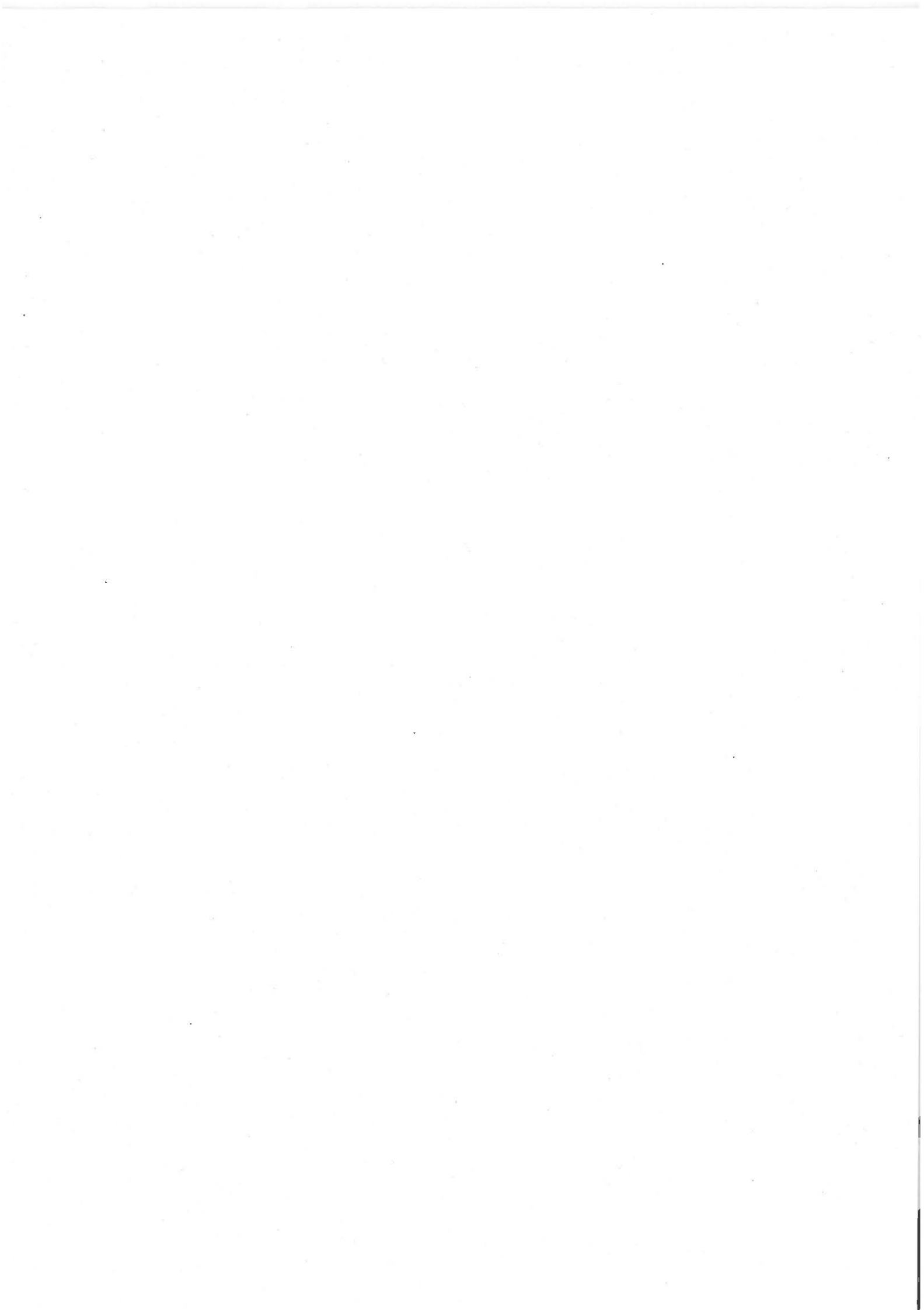
The application of the seal of Welsh Ministers is AUTHENTICATED by Michael Clarke who is duly authorised for that purpose by the Director of Legal Services by authority of Welsh Ministers under section 90(2) of the Government of Wales Act 2006

Authenticated by authority of the
Director of Legal Services



Annex A

Handbook





Department
for Transport

Section 30 Handbook

Volume 1 - PART A Introduction

Moving Britain Ahead

OFFICIAL SENSITIVE

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OGL

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Purpose

This document is intended to provide guidelines for staff in the event that the Secretary of State's duty to secure the continuity of passenger rail services under section 30 of the Railways Act 1993 arises.

DOCUMENT INFORMATION

Master
 Location
 File Name Section 30 handbook [v3.2]
 Distribution Rail Commercial Deputy Directors

CHANGE HISTORY

Version No.	Date	Details of Changes included in Update	Author(s)
v1.0	1 Nov 2006	N/a	Fiona Lee
v1.2	07/02/07	Reviewed by legal - drafting updated	Jamie Fox and Fiona Lee
V2.0	01/10/07	Governance section added following agreement by NN Exec	Fiona Lee
V2.1	30/04/08	Reviewed by Stella Bye, Joan Gibbs, Stuart Smith, Fiona Lee and updated by Stuart Smith	Stuart Smith
V2.2	January /March 2009	Reviewed by Jamie Fox, James Sherratt and Joanie D'souza (NB Version not approved)	Joanie D'souza
v2.3	June 2009	Reviewed by Jamie Fox, Colin Westwood, Rachel Webbe and updated by Jane Thomas	Jane Thomas
V2.4	June 2011	Reviewed by Paul Lawry, Colin Westwood	Paul Lawry
V2.5	July 2011	Reviewed by Roy Calcutt, Emma Northey Rachel Webbe updated by Assita Diarra	Assita Diarra
V2.6	August 2011	Reviewed by Sonia Braybrook , updated by Assita Diarra	Assita Diarra
V2.6.1	July 2012	Reviewed by Peter Christodoulou and Assita Diarra	Peter Christodoulou/Assita Diarra
V2.7	December 2012	Reviewed to reflect lessons learned from NXEC termination.	Assita Diarra
v3.0	December 2015	Complete revision to reflect Rail Group Passenger Services structures and the role of the DfT Section 30 Resilience Team in place of Directly Operated Railways	Interfleet/Arup/EY
V3.1	December 2016	Complete revision to reflect lessons learnt by the DfT Section 30 Resilience Team - draft	SNC-Lavalin / Arup / EY
V3.2	December 2016	Complete revision to reflect lessons learnt by the DfT Section 30 Resilience Team - final draft after review by DfT	SNC-Lavalin / Arup / EY

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Glossary of Names, Abbreviations & Acronyms

Item	Description
ATOC	Association of Train Operating Companies
CCM team	A part of Passenger Services responsible for Contract & Commercial Management oversight of franchises
Detailed Mobilisation Plan	Detailed mobilisation plan to be used in a s30 event, based on the Short Notice Mobilisation Plan
DfT	Department for Transport
DfT Legal team	Members of the DfT's Legal Directorate
DfT Holding Company	A company set up by the DfT to act as the holding company for a TOC in the ownership of DfT following a s30 event
DfT OLR Company	A company in the ownership of the DfT Holding Company, set up to act as the operator of last resort following a s30 event
EoD	Event of Default
FA	Franchise Agreement
Finance team	A part of Passenger Services responsible for Financial oversight of franchises
FRI lease	Full repairing and insuring lease (stations)
GMH	Great Minster House, the DfT HQ building in Horseferry Road, SW1
Head of Market	DfT person in charge of a franchise team for a particular rail franchise
Handover Pack	Information pack required in a Franchise Agreement to be delivered by the TOC to DfT four times a year, containing specific information about the franchise and its assets
Key Franchise Asset	An asset designated as a key asset by DfT
Markets Board	A DfT Rail Group board responsible for oversight of the work of the Markets team within Passenger Services (including the Markets Director and the Heads of the geographic markets)
Markets Director	DfT director in charge of the Heads of Markets
Network Rail	The infrastructure manager responsible for the operation, maintenance and enhancement of the majority of the GB rail network
NRFT	National Rail Franchise Terms
OLR	Operator of Last Resort as defined in s30
Options Appraisal Paper	Paper setting out different options to pursue in a s30 event
ORR	Office of Rail and Road, the safety and economic regulator of the GB railway
Owning Group	Parent company of a TOC.
PTA / PTE	Passenger Transport Authority / Passenger Transport Executive
Passenger Services	A Directorate of the DfT's Rail Group responsible for the delivery of passenger services including rail franchising
Rail Board	A DfT board responsible for oversight of the work of the Rail Group

Rail Group	A Directorate General of the DfT responsible for the railways in GB
RSP	Rail Settlement Plan
ROSCO	Rolling Stock (Leasing) Company
s30	Section 30 of the Railways Act 1993 as amended
s30 event	An occurrence which, under s30 of the Railways Act 1993 as amended, triggers actions up to and including franchise termination.
s30 intervention	The SoS's response to a s30 event occurring including actions up to and including franchise termination and appointment/mobilisation of an OLR.
s30 Mobilisation Team	A team drawn from Rail Group and the wider DfT responsible for supporting the s30 Project Manager appointed for a specified franchise
s30 Project Board	A sub-committee of the Rail Board appointed to provide the s30 Project Manager with guidance and authority
s30 Project Manager	A senior DfT official, appointed by the Rail Board and the guidance of the s30 Project Board, dedicated to leading the Rail Group's response to a s30 event at a specified franchise
s30 Resilience Team	A team consisting of SNC-Lavalin Transport Advisory, Arup and EY appointed by the DfT to support delivery of the SoS's obligations under s30 of the Railways Act 1993 as amended
Short Notice Mobilisation Plan	Mobilisation plan developed by DOR
SoS	Secretary of State for Transport
TOC	Train Operating Company
TSA	Ticketing and Settlement Agreement
TUPE regulations	The Transfer of Undertakings (Protection of Employment) Regulations 2006

Preface

Introduction

This Section 30 Handbook (the Handbook) is a working document for those involved in the termination of an existing passenger rail franchise and the mobilisation of a new franchise by DfT. The Handbook describes the activities that users need to undertake to ensure the seamless continuity of railway services in the case of a Section 30 (s30) event occurring.

The Handbook has been updated to reflect the lessons learnt during 2016. It was also decided to improve the accessibility and relevance of the Handbook by reconfiguring and updating it.

Section 30

Section 30 of the Railways Act 1993 (as amended) places a duty on the SoS to provide or secure the provision of, services for the carriage of passengers by rail where a franchise agreement is terminated or otherwise comes to an end but no further franchise agreement has been entered into. This can occur at three phases within the cycle of franchising and re-franchising:

- Failure of an established Train Operating Company (TOC);
- Failure during a new TOC mobilisation; and
- Failure of a franchise competition or Direct Award.

For the purposes of clarity the first failure scenario has been split into two events, i.e. an in-franchise event triggered by Department for Transport (DfT) and an in-franchise event triggered by the TOC.

Purpose of the updated Handbook

The previous version of the Handbook has not been used as a reference handbook by DfT during or in preparation for a s30 event, and as such required updating. Therefore, decision trees and checklists to provide a roadmap through different s30 events have been added to the Handbook and the role of the Handbook has been widened to encompass:

- the corporate memory of previous s30 events;
- templates, governance arrangements, etc.;
- other s30 related materials;
- a list of relevant documents; and

- a definitions list.

For clarity, the Handbook is not only to be used once a s30 event has materialised, but also when undertaking contingency planning when a s30 event is possible.

Inclusion of lessons learnt

During 2016, certain specific s30 activities were undertaken, the lessons learnt from which have been included in the Handbook. The lessons originate from the following activities:

- A s30 mobilisation preparation during the Direct Award of the CrossCountry franchise.
- A dry-run (theoretical) mobilisation exercise in which a s30 event (a TOC withdrawing from a live franchise) was simulated.
- A deep dive analysis into the Handover Pack of two TOCs.

One of the most important findings from these activities has been to restructure the Handbook as described below. More specific lessons have been included in Volume 5.

Structure of the Handbook

The Handbook has been split into different Volumes to improve guidance accessibility specific to different types of s30 event.

- Volume 1 is an introduction (Part A), setting out the scope of s30 and the role of the Handbook, as well as providing definitions and a generic decision tree describing the different s30 scenarios.
- The subsequent Volumes 2 to 4 together form Part B, each being scenario-specific. It contains a more detailed process tree for the specific scenario as well as an overview of the process and a detailed checklist.
- The final Volume 5 (Part C) includes a set of supporting documents.

The contents of all Volumes are described below:

- Volume 1 - PART A
 - Glossary / definitions list
 - Introduction to Section 30
 - Role and structure of the Handbook
 - Monitoring and (potential) Section 30 intervention scenarios
- Volume 2 - PART B (I)
 - Scenario I: In-franchise s30 event triggered by TOC
 - Specific process tree
 - Process

- Checklist
- Volume 3 - PART B (II)
 - Scenario II: In-franchise s30 event triggered by DfT
 - Specific process tree
 - Process
 - Checklist
- Volume 4 - PART B (III)
 - Scenario III: Failure of a franchise competition, Direct Award or mobilisation
 - Specific process tree
 - Process
 - Checklist
- Volume 5 - PART C
 - Supporting documents for Volumes 1 – 5:
 - Governance framework
 - Business Case template
 - Letter and other communication templates
 - Lessons learnt (s30 corporate memory)
 - Linked documents

1. Introduction and Background

1.1 The Handbook

This Section 30 Handbook (the Handbook) is intended to be a working document for all involved in the termination of an existing passenger rail franchise and the mobilisation of a new franchise. It is a live document and will be reviewed at least annually, at the end of a s30 mobilisation or when changes are made to reflect changes in policy and governance within the Department for Transport (DfT), particularly the Rail Group and Passenger Services.

The Handbook describes the activities that users need to undertake in to ensure the seamless continuity of railway services in case of a Section 30 (s30) event occurring. It gives a background explanation of what s30 termination is, the events that could trigger a termination and the options available to the Secretary of State for Transport (the SoS) including a termination in an emergency scenario. The Handbook also provides an overview of the various stakeholder roles. This starts from the identification of an event that could trigger the s30 process to the mobilisation of the new operator and thereafter.

The Handbook includes reference to the DfT Section 30 Resilience Team (the s30 Resilience Team)¹ appointed to replace the role of Directly Operated Railways Ltd. (DOR) with respect to s30 events. In addition to being available in the event of a potential s30 event occurring, the s30 Resilience Team is responsible for quarterly monitoring of TOCs to report on their financial and operational health from a s30 perspective.

1.2 What is Section 30?

Section 30 of the Railways Act 1993 (as amended) places a duty on the SoS to provide or secure the provision of, services for the carriage of passengers by rail where a franchise agreement is terminated or otherwise comes to an end but no further franchise agreement has been entered into. This can occur at three phases within the cycle of franchising and re-franchising:

- Failure of an established TOC;
- Failure during new TOC mobilisation; or
- Failure of a franchise competition or Direct Award.

¹ The DfT Section 30 Resilience Team is for the time being (2016/17) provided by an alliance of SNC-Lavalin Transport Advisory Ltd, Ove Arup & Partners Ltd and Ernst & Young LLP, appointed by Rail Group under the STAR framework.
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There are many events in which a s30 intervention may arise during the term of a franchise, one of which is the occurrence of an Event of Default (EoD) arising within the terms of a Franchise Agreement (FA). EoDs, which may lead to a franchise being terminated early, are defined terms in FAs and National Rail Franchise Terms (NRFTs) which apply to every FA. Different FAs may include different scenarios in which EoDs may arise. Further details are given in Annex A. Please note that not all EoDs automatically lead to a s30 event, as each scenario should be considered on its own merits.

There are also more routine events that warrant planning for a s30 intervention. Whenever a 'traditional' franchise mobilisation takes place, the SoS undertakes a degree of planning for a s30 event occurring once an operator has been informed of winning a franchise and is mobilising for transition. This is to ensure should the transition not happen for any reason, the SoS is able to take the necessary steps to provide, or secure the continuity passenger rail services.

During a procurement exercise to re-let a franchise, when the SoS believes that value for money has not been secured in accordance with Section 26ZA(1)(b) of the Railways Act, or the procurement process fails due to legal challenge or other reason, the SoS can secure those passenger services designated under Section 23 of the Railways Act, by way of a s30 intervention.

1.3 When to use this Section 30 Handbook

The Handbook is designed to give an overview of the 'Section 30' process which is to be used:

- In a scenario requiring contingency planning for a potential EoD;
- When an EoD has occurred and is material and unremedied;
- In the event that a TOC may voluntarily or involuntarily cease to trade;
- If a TOC is likely to be issued with a Railway Administration Order which would require the SoS to fulfil his obligations under the 1993 Railways Act (as amended);
- Where the SoS is unable to secure a FA;
- In the event of a legal challenge;
- When a mobilisation failure occurs; or
- When a Direct Award is being considered.

This Handbook is not intended as a fully comprehensive manual as each scenario will be unique to each TOC, the nature of the EoD and when during the life of a TOC the event occurs. However, an attempt has been made to include a clear overview of decisions, processes and activities (in checklists) for each of the major s30 scenarios. These are included in Part B of the Handbook.

1.4 How to use this Section 30 Handbook

From this Handbook you will understand how a s30 event may arise through a high-level decision tree. Also, you will understand from this decision tree how other options than s30 intervention may be considered. Once it has been established that s30 intervention is appropriate, more specific decision trees, process descriptions and a Detailed Mobilisation Plan for the most common s30 events are included in Part B of this Handbook.

1.5 Inclusion of lessons learnt

Upon appointment in 2015, the s30 Resilience Team reviewed the work done by DOR for lessons learnt. Moreover, further lessons have been learnt during the s30 activities undertaken during 2016. These lessons have been applied to the current version of the Handbook.

1.5.1 s30 Monitoring

It was recommended from the DOR review that the s30 monitoring role be based on reporting strictly objective criteria (measures of each TOC's financial situation and business performance against contractual requirements and other agreed benchmarks, both historic and forward looking) and on simple flags should those criteria be breached. As a result, s30 quarterly reporting is being based on pre-agreed readily available industry data sourced from DfT. No origination of data is undertaken by the s30 Resilience Team, as data must be understood and interpreted by all stakeholders in the same way.

A further description of the monitoring process is included in Chapter 2 of this Handbook.

1.5.2 Overcoming Gaps in National Rail Franchise Terms

It was recommended from the DOR review that any s30 shortcomings identified in the NRFTs on Key Franchise Assets and the Handover Pack should be rectified. Given that these remain unchanged currently, the s30 Resilience Team will need to set out alternative working protocols. This remains a risk in the context of (preparation for) a s30 mobilisation.

1.5.3 s30 Team Make-up and Engagement Processes

With respect to the role of Operator of Last Resort (OLR), it was recommended from the DOR review that the retained / prospective s30 Holding Company directors make sure that the team delivers. During the TOC monitoring process, no such specific commitment from the s30 Holding Company directors should be required.

It was recommended following the DOR review that the s30 Resilience Team engages top-down with franchise operators in the event of a s30 mobilisation, and that this be set out in the s30 team's standard working protocols, informed by the approach adopted by DOR. The need for DfT briefing of the TOC MD prior to that

engagement was noted as a key requirement of the recommended approach. This recommendation is being reiterated after the CrossCountry mobilisation as part of the Direct Award intervention, in which the failure to have this meeting caused issues during the mobilisation process.

It was recommended following the DOR review that the Holding Company be dormant (i.e. not active), but that the DfT holds at least semi-annual meetings with the s30 Resilience Team's retained / prospective directors of the Holding Company with the remit of undertaking a joint scan of potential issues at the horizon, creating timely awareness. This has been implemented in the s30 working protocols.

1.5.4 Keeping Handbooks up-to-date

The Handbook is a working document for all involved in the termination of an existing passenger rail franchise and the mobilisation of a new franchise. DOR developed a Short Notice Mobilisation Plan, which has now been restructured to become the Detailed Mobilisation Plan. It is incorporated in Part B of the Handbook. It enables the team to act swiftly if very little time is available and it remains available to the s30 Resilience Team.

The Handbook is a live document and it will be regularly reviewed at least annually, at the end of a s30 intervention or when changes are made which reflect changes in policy and governance within DfT, the Rail Group and Passenger Services in particular.

1.5.5 Review of Handover Packs

The Franchise Agreements require TOCs to submit quarterly Handover Packs to DfT. In the franchise obligations, it is described what the Handover Packs should consist of. It usually includes:

- a property list;
- a contracts list;
- an overview of technology (IT) systems;
- an overview of insurance policies; and
- an overview of assets.

A review has been undertaken of the Handover Packs for two TOCs: the packs were found to be incomplete and in some aspects inconsistent between versions. Moreover, it was found that the franchise obligations do not contain sufficient requirements for a s30 event. To improve the level of information a number of recommendations have been made. The lack of sufficient(ly qualitative) information in the Handover Packs remains a risk to any s30 mobilisation. Undertaking a rolling review of all Handover Packs is envisaged as an action starting in 2017.

2. Monitoring and (potential) s30 intervention

2.1 When does potential s30 intervention apply?

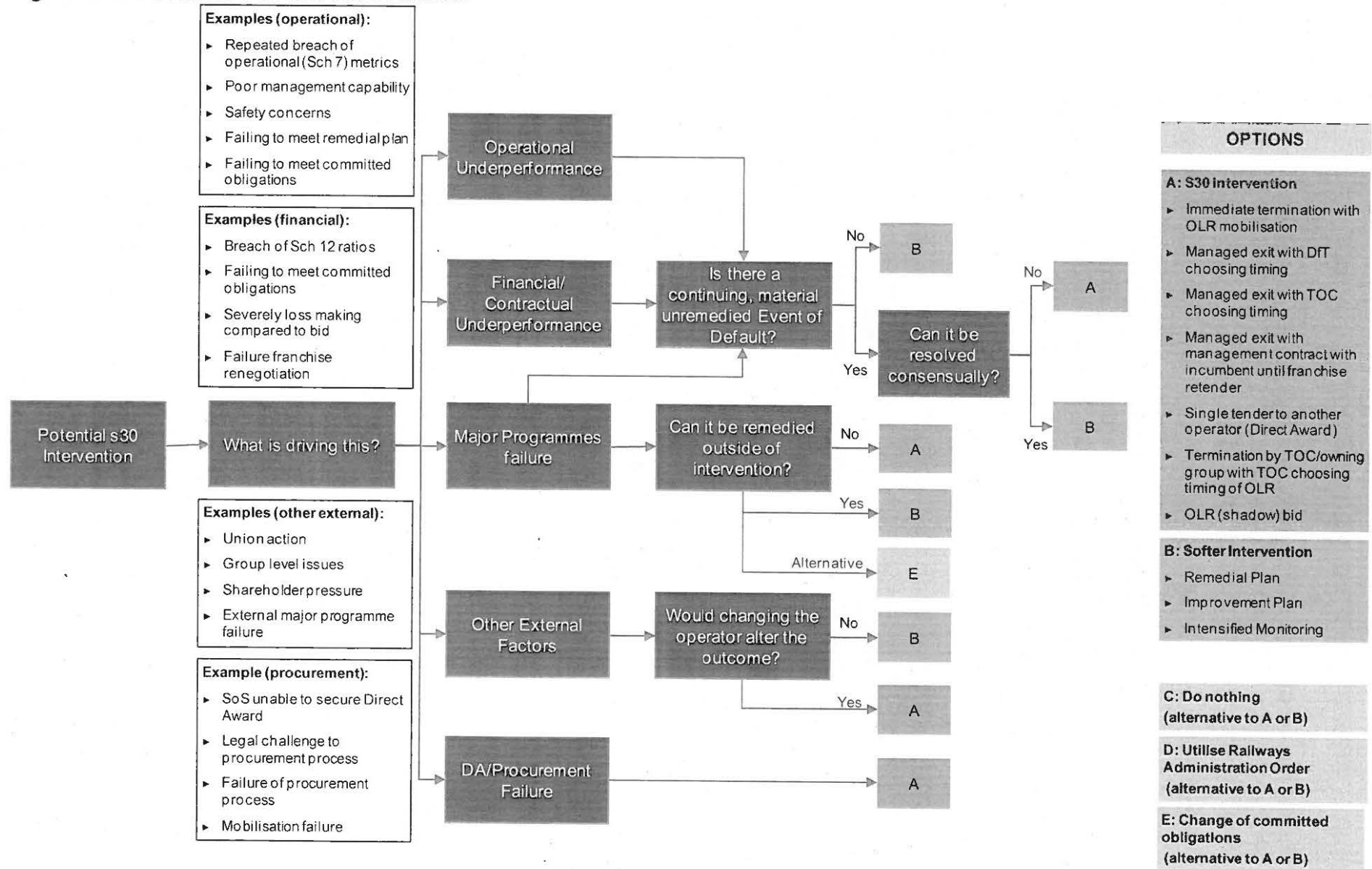
The decision tree below shows different causes that could potentially lead to (s30) intervention. The causes have been grouped into categories as follows:

- Operational underperformance;
- Financial / contractual underperformance;
- Major programmes failure;
- Other external factors;
- Direct Award / procurement failure.

These causes do not always (immediately) lead to s30 intervention. This is highlighted in the decision tree in Figure 2-1. For example, this may be the case if an external factor causes the TOC to breach their contractual obligations (such as ongoing industrial disputes). In these circumstances it may be appropriate not to commence with a s30 intervention if changing the operator would not alter the outcome. In this example, an alternative form of intervention may be more appropriate.

The decision tree is to be used to determine the most appropriate course of action in each scenario. In some instances, this could be to do nothing, to undertake a softer form of intervention, or to utilise a Railway Administration Order in appropriate circumstances as an alternative to s30 intervention. In other instances, this could involve s30 intervention.

Figure 2-1: Decision tree s30 intervention



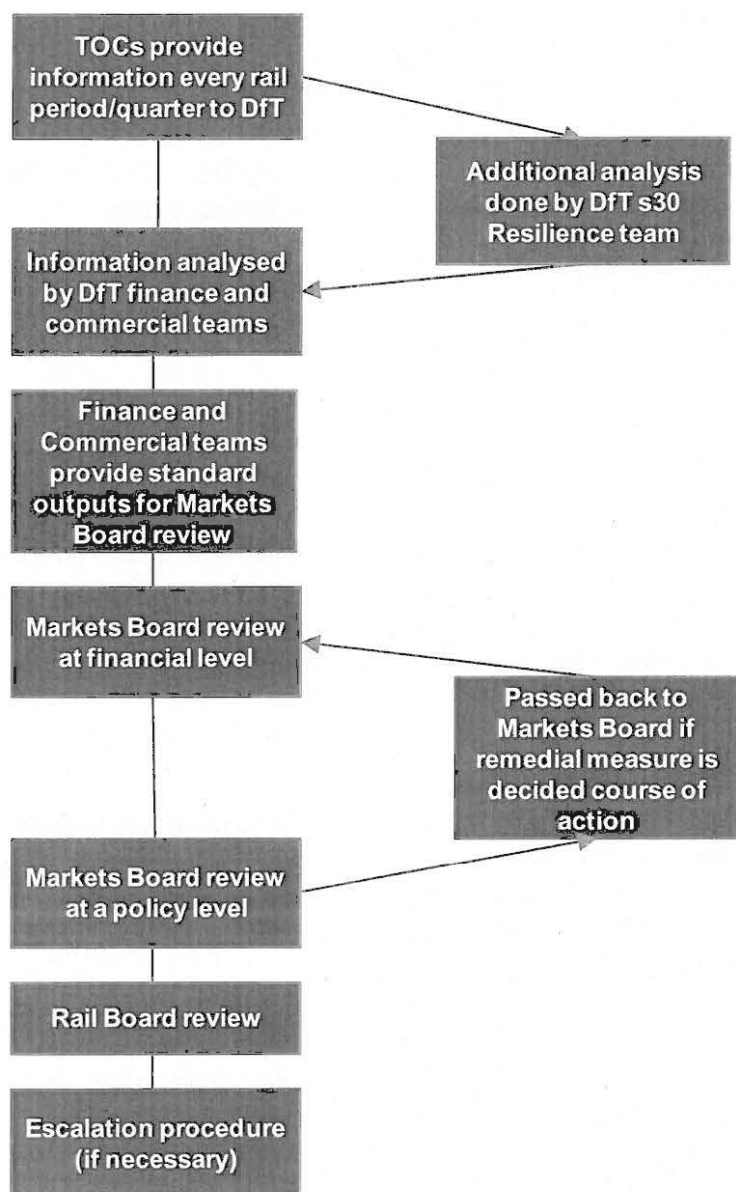
2.2 Role of the monitoring process

The monitoring process is important in the light of the decision tree described in the previous section. The monitoring process provides DfT with the information to anticipate and make the decisions described above.

The Contract & Commercial Management (CCM) and Finance teams engage with TOCs and their Owing Groups to ascertain the robustness of their businesses. The operational and financial performance of the TOCs are reviewed and analysed on a regular basis including the risk of a contractual default. Emerging issues and risks are highlighted for Markets Board via dashboards and risk register reports. Markets Board analyses these reports first at a financial level, then at a policy level if required. Further escalation to Rail Board follows this, with the most serious of issues being reported to Ministers.

The CCM and Finance teams also monitor Owing Groups using publicly available information such as stock exchange activity and public accounts. This process is shown in a simplified way in Figure 2-2 below. The figure shows that s30 monitoring is only part of the more extensive monitoring undertaken by DfT.

Figure 2-2: Monitoring Process (simplified)



2.2.1 Information provided by TOCs and Owing Groups

Financial and operational information is provided by the TOCs to DfT every rail period. Additionally, most TOCs are required to provide quarterly reports that contain additional detail and forecasts.

2.2.2 The role of the CCM and Finance teams

The commercial and finance teams work closely with their counterparts at the TOCs to produce a periodic finance and operational dashboard for presentation to Markets Board. Wider monitoring of Owing Groups is also undertaken using publicly available information. It should be noted that this is done in terms of the general health of the TOCs, which is a slightly different context to the focus of the s30 Resilience Team.

2.2.3 The monitoring role of the s30 Resilience Team

The s30 Resilience Team analyses the pre-agreed industry data provided by the TOCs. The data may be modified from the pre-agreed industry data if agreed between the relevant operator and DfT. The CCM and finance team produce quarterly reports for each TOC. However, the CCM and Finance teams do not monitor the TOCs specifically from a s30 perspective. Therefore, the s30 Resilience Team focus specifically on this aspect. Moreover, the s30 Resilience Team undertakes analysis into the Handover Packs prepared by TOC as part of their franchise obligations. Undertaking a rolling review of all Handover Packs is envisaged as an action starting in 2017.

2.3 Escalation procedure

Monthly reports go to the Markets Board, which discusses any issues at a financial level. The Markets Board subsequently decides if an issue is worthy of discussing at a policy level. The Markets Board assesses whether to raise the issue with the Rail Board, which then escalates this to Ministerial level if required.

2.3.1 Informing the Rail Board and the SoS

The Markets Board supports the Rail Board in the delivery of its objectives and the discharge of its delegated authorities. The Markets Board needs to be aware at an early stage of any situation that could potentially threaten the provision of passenger services. This allows it to quickly assess the situation and provide guidance and recommendations to the Rail Board as appropriate.

If an EoD or other event listed in Section 1.3 arises, the CCM and Finance teams are required to provide an initial brief to Markets Board which includes the following:

- Outline the (impending or actual) EoD;
- The current financial status of the TOC;
- Committed obligations delivered to date;
- Any other information relevant to the case.

Following an initial assessment, the Markets Board decides whether to take forward a plan to the Rail Board to consider implementing s30 intervention.

The Markets Director is then required, together with the Director General Rail Group to brief the SoS on the emerging situation, the options available and any recommendations so far made.

Note that the decision on whether to implement s30 intervention will ultimately be made by the SoS following recommendations from the Rail Board.

It should be noted that a separate process must be adopted in an emergency scenario. The relevant governance arrangements are set out in Part B (I). An example of this would be an emergency scenario in which a TOC wishes to prematurely surrender its franchise. In an emergency situation a dedicated s30 Project Manager and s30 Mobilisation Team must be established early in the process. The Rail Board will need to authorise the establishment of a specially constituted s30 Project Board, as a Sub-committee of the Rail Board, to provide the necessary high level guidance. Terms of reference for the s30 Project Board will be provided by the Rail Board.

2.3.2 Options Appraisal Paper to Markets Board

The options appraisal paper is designed to help the Markets Board formulate their recommendations to the Rail Board as to whether or not terminate a franchise or to undertake a different form of (s30) intervention. The Markets Board will assess each option and decide which one best fulfils the SoS's obligation to ensure continuity of passenger services.

The paper should include whether the termination options fulfil the SoS's legal obligations. A succinct business case for each option should be developed, including any proposed actions by the TOC to mitigate the EoD. There may be issues that carry across to other franchises, owned or co-owned by the same Owing Group, and these should also be considered in the options appraisal.

The Head of the relevant Market will lead the preparation of the options appraisal paper with input from the CCM and Finance teams. This should be presented to the Markets Board and will include the following options:

- Emergency termination with DfT becoming Operator of Last Resort (OLR) with immediate effect, making use of a DfT OLR Company for mobilisation and oversight of the franchise whilst it is in public ownership;
- Managed exit with DfT becoming OLR at a time of its choosing funded either by the franchisees performance bond or the franchisee/Owing Group paying an equivalent sum;
- Managed exit with a management contract with the incumbent until the franchise can be re-let;
- Single tender action to another private sector operator (Direct Award).

Explanations of the options to be considered are contained within Volume 5 under Business Case Summary along with tabulation of generic benefits, costs and risks of the options – to be validated in each case.

The Markets Board will then advise on the preferred course of action and whether to invoke the termination process or not.

Note that the DfT Legal team must be consulted throughout the process. They must also clear the options appraisal paper prior to seeking the SoS's formal approval.

2.3.3 Decision by the Secretary of State

The options appraisal/business case paper including the Markets Board recommendations will be put to the Rail Board for consideration.

The Rail Board will make its final recommendations for decision by the SoS. A template termination decision minute is attached in Volume 5.

Annex A: Event of Default (EoD)

There are many ways in which an event of default could occur. Paragraph 1.1 of Schedule 10.2 of the "Template Franchise Agreement" outlines the provisions relating to default. This is defined and listed for each franchise in the Franchise Agreement. A basic outline is given below. Part of the regular franchise monitoring process is to identify early warning of a potential EoD.

Note: the examples are not exhaustive and are provided as guidance only to aid franchise teams with identifying potential events of default. The examples have been further developed to provide an overview on the required resources to support the various activities.

- Insolvency

- Administration: Any step being taken by any person with a view to place the Franchisee, parent or bond provider into administration under Part II of the Insolvency Act 1986.

Example: Creditor successfully files against a TOC/Franchisee for non payment of debts.

- Insolvency: Where the Franchisee, Owing Group or bond provider stops, suspends or threatens to stop or suspend payments of all or a material part of its debts. Also, being unable to pay its debts or being deemed unable by virtue of section 123(1) or (2) of the Insolvency Act 1986.

Example: Franchisee, guarantor or bond provider is unable to service debts and stops making debt repayments.

- Arrangements with Creditors: Directors of the Franchisee, parent or bond provider making a proposal under Section 1 of the Insolvency Act 1986 for the deferral, rescheduling or other readjustment for all or a material part of its debts. This could also include a moratorium in respect of debts.

Example: A Franchisee, guarantor or bond provider renegotiates debt payments with creditors over a longer period of time or asks for a suspension to debt payment plans.

- Security Enforceable: Steps taken to enforce security over or a distress, execution or other process being served against property of the Franchisee. This can also apply to the whole or substantial parts of the assets or undertaking of the Franchisee, parent or bond provider. This could be by appointment of a receiver to enforce the security.

Example: Due to a Franchisee, guarantor or bond provider not servicing secured debt, a creditor enforces security on the asset or property against which the loan was secured, with the aim of recovering the funds.

- Stopping business/ Winding-up: This could be any step taken with a view to winding-up the company. This can include presentation of a winding-up petition by any party. Note that if the business is being wound up as part of a reconstruction, reorganisation, merger or consolidation approved by the SoS this will not be considered as an event of default.

Example: A creditor presents a petition to court to have a Franchisee wound up due to non payment of debts. This could also happen in respect of non payment of tax where HMRC could petition the court.

- Railway administration order: An order made to protect an insolvent company. This is effectively a discretionary power of the SoS. Should the SoS choose to protect an insolvent company the Department effectively underwrites any debts. The purpose of a Railway Administration Order is to transfer, as a going concern, the company's business in order to keep passenger services continuing.

Example: A Franchisee becomes insolvent and the SoS decides to underwrite the franchise in order to keep passenger services running.

- Analogous events: Any event which under Law would have an analogous or equivalent effect to any of the events listed above.

Example: A Franchisee decides to hand the franchise back to the SoS and walk away. Where this happens mitigation of effects must be considered and acted upon.

- Non-payment of sums due to the Secretary of State:

- The Franchisee failing to pay the SoS sums due under the Franchise Agreement within 28 days of the due date.

Example: A Franchisee refuses to pay franchise payments due under Schedule 8 of the Franchise Agreement to the SoS.

- Change of control without prior consent:
 - A change to the identity of any one person, or two or more persons acting by agreement who may control the Franchisee without the prior consent of the SoS, whenever this occurs during the franchise term.

Example: An Owning Group is sold to another owner without the prior agreement of the SoS.

- Revocation of any licence or safety certificate:
 - Where a licence required by the Franchisee in order to fulfil any obligation of the franchise is revoked.

Example: A depot access licence is revoked by the Office of Rail Regulation meaning the Franchisee does not have sufficient provision to keep the fleet maintained effectively.

- Breach of law:
 - If it becomes unlawful for a Franchisee to provide all or a material part of its passengers services, stations or depots.
 - The Franchisee, its directors or senior managers being convicted of manslaughter, fraud or any other indictable offence which relates to the provision of the services under the franchise agreement.
 - Material non-compliance with a prohibition or enforcement order issued by ORR. Where an appeal is lodged an event of default will not be deemed to have taken place until an appeal is deemed unsuccessful.

Example: Directors of a Franchise are convicted of manslaughter due to a passenger fatality which was proven to have been caused by management decisions.

- Continuing material contravention of other obligations:
 - Contravention to a material extent of one or more of the obligations of the franchise agreement, where contravention continues after the SoS has notified the TOC of the period in which to remedy the contravention.

Example: A franchise continues to breach a franchise obligation, despite being served with a previous breach notice. There could be an Event of Default in the event that the Franchisee continues to not provide services contracted under the Passenger Service Requirement or Service Level Commitment.

- Issues with financial ratios, funding deeds, performance bonds, season ticket bonds or guarantees:
 - Breach of required financial ratios.
 - Performance or season ticket bonds ceasing to become legal, valid or binding on the provider.
 - Failure of the Franchisee to procure a performance or season ticket bond which satisfies section 12 of the NRFT.

Example: A Franchise Operator fails to secure a replacement bond (for a Season Ticket Bond or Performance Bond) prior to the expiry of the existing Bond(s).

- Key contracts
 - A key contract termination where not requested or approved by the SoS without a successor contract being put in place.

Example: As designated under the terms of the Franchise Agreement, in the event that the Franchisee terminates or fails to secure a replacement key contract, without the prior consent of the Secretary of State

- Force majeure
 - The SoS may terminate the franchise agreement if any force majeure event continues which would prevent the Franchisee delivering passenger services for more than 6 consecutive months.

Example: A severe landslip blocks the only line along which the TOC operates, meaning it cannot run services into a main terminus station. Remedial works will take longer than 6 months.

- Breach of passenger service requirement or exceeding the default level for any performance benchmark for a defined period:

- The criteria for franchise service requirements can be found in Schedule 7 of the Franchise Agreement.

Example: A Franchisee repeatedly runs services with trains of smaller capacity than that specified in the train plan in order to cut costs and is consistently underperforming against capacity benchmarks.

- Failure to comply with a Remedial Agreement or Enforcement Order:
 - Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is material. Or, non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order, in each case made by the Secretary of State under the Act

Example: An enforcement order is served to a TOC outlining what is required of them. The TOC fails to comply with the enforcement order and continues to operate in the manner which initially attracted the enforcement order.

- Contravention of Other Obligations:
 - Where the Franchisee contravenes to a material extent any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of Schedule 10.3 of NRFT).

Example: An example of this is where the Franchise Operator fails to deliver on a continuing basis, the services contained under its Passenger Service Requirement or Service Level Commitment.

- Non-membership of inter-operator schemes:
 - Franchisee ceasing to be a member of or being suspended from inter-operator schemes as defined in the definitions section of the National Rail Franchise Terms (in the Franchise Agreements).

Example: Franchisee withdraws from a PAYG scheme operating in a particular area, without authorisation from the SoS.

- Ceasing to provide passenger services:
 - Franchisee fails to provides passenger services as specified in the franchise agreement

Example: A TOC withdraws passenger services on an infrequently used branch line without consent.

- Breach of financial ratios:
 - The Franchisee must ensure that the ratio of its modified revenue to actual operating costs will equal or exceed 1.05:1 in each reporting period of the franchise.
 - Where the ratio is below 1.05:1 an event of default will be deemed to have occurred and termination will need to be considered.
 - Breach in accordance with para 3.3 of schedule 12 of the NRFT. There should only be an event of default once any contracted funding agreement has been exhausted.
- Termination of another franchise agreement with which the operator is connected. For example, where the operator in question is also the operator of a franchise which has been terminated, or is affiliated to that operator, i.e. a cross-default.
 - NOTE: consideration must be given to any Cross-Default actions ONLY AFTER any termination.