

Department of the Environment, Transport & the Regions

PASSENGER LICENCE

granted to

DIRECT RAIL SERVICES LIMITED

Table of Contents

	PAGE
Part I - Scope Of The Licence	3
Part Ii - Interpretation	4
Part Iii - Conditions	5
A: Consumer Protection Conditions	5
Insurance Against Third Party Liability	5
Claims Allocation And Handling	5
Transport Police	6
Complaints Handling Procedure	6
Provision Of Services For Disabled People	7
B: Other Conditions	9
Railway Group Standards	9
Liability Of Operators To Each Other	9
Environmental Matters	9
Predatory Fares And Exclusionary Behaviour	10
Restrictions On Certain Activities By The Licence Holder	12
Inspecting Officers	12
Timetabling	12
Provision Of Information To The Regulator And The Authority	12
Payment Of Fees	13
Change Of Control	14
Schedule - Terms As To Revocation	15

Part I - Scope of the Licence

1. The Secretary of State in exercise of the powers conferred by section 8 of the Railways Act 1993 (as amended) ("the Act"), hereby grants to Direct Rail Services Limited, a company registered in England having its registered office at Risley, Warrington, Cheshire WA3 6AS ("the licence holder") a licence authorising the licence holder:
 - (a) to be the operator of trains being used on a network for the purpose of carrying passengers by railway;
 - (b) to be the operator of trains being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in (a) above; and
 - (c) to be the operator of trains being used on a network for the purpose of assisting other operators of railway assets,subject to the Conditions set out in Part III hereof ("the conditions").
2. This licence shall come into force on Friday 10 October 1997 and shall continue in force unless and until revoked in accordance with the provisions of the Schedule hereto or by not less than 10 years notice given to the licence holder by the Rail Regulator after consultation with the Strategic Rail Authority ("the Authority"), such notice not to be given earlier than 25 years after the date on which this licence comes into force.

Date: 9 October 1997

Signed by authority of the
Secretary of State for Transport

Part II - Interpretation

1. In this licence:

"control" shall be construed in accordance with sub-sections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 with the following modifications namely:

- (a) for the words "the greater part" wherever they occur in the said sub-section (2) there shall be substituted the words "30 per cent or more"; and
- (b) in the said sub-section (6), for the word "may" there shall be substituted the word "shall", the words from "and such attributions" onwards shall be omitted and in the other provisions of that sub-section any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary;

"licensed activities" means things authorised to be done by the licence holder in its capacity as operator of trains pursuant to this licence.

- 2. Any reference in this licence to a numbered paragraph is a reference to the paragraph bearing that number in the Condition in which the reference occurs.
- 3. In interpreting this licence, headings shall be disregarded.
- 4. Where in this licence the licence holder is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue after that time limit if the licence holder fails to comply with that obligation within that time limit.
- 5. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.
- 6. Unless the context otherwise requires, terms and expressions defined in the Railways Act 1993 shall have the same meanings in this licence.

Part III - Conditions

A: Consumer Protection Conditions

Condition 1 : Insurance Against Third Party Liability

1. The licence holder shall, in respect of licensed activities, maintain insurance (including self-insurance) against third party liabilities on terms approved by the Authority¹ (including, but without limitation, with respect to the type, cover and level of insurance and identity of insurer), with any such modification as may be required pursuant to paragraph 3.
2. The licence holder shall, except as the Authority may otherwise consent, procure that every insurance policy maintained pursuant to paragraph 1 shall bear an endorsement to the effect that 30 days' notice shall be given to the Authority by the insurer or insurance broker of any lapse or cancellation of, or material change to, the policy.
3. Where the Authority notifies the licence holder that the Authority reasonably requires any modification of the insurance approved by the Authority pursuant to paragraph 1, the licence holder shall, no later than 60 days (or such longer period as the Authority may approve) from the date of the notice, procure that such modification is made.
4. In this Condition:

"self-insurance" means the licence holder's financial capacity to meet any liability to a third party in respect of which the licence holder does not otherwise have insurance.

Condition 2 : Claims Allocation and Handling

1. The licence holder shall, except in so far as the Authority may otherwise consent, at all times be a party to such agreements or arrangements relating to:
 - (a) the allocation, among operators of railway assets, of liabilities to persons other than such operators; and
 - (b) the handling of claims by or on behalf of such persons against such operatorsas may have been approved by either:
 - (i) the Regulator as at the date on which this licence came into force (as may have been amended from time to time); or
 - (ii) the Authority (as amended from time to time).

¹ Pursuant to the Transport Act 2000 (Railway Licence Modification) Scheme any approval given before 1st February 2001 by the Regulator in respect of a consumer protection condition in this licence, has effect as if such approval were given by the Authority.

2. Except with the consent of the Authority, the licence holder shall not, in relation to any of the agreements or arrangements described in paragraph 1 (the "relevant claims handling arrangements"), enter into any agreement or arrangement with any other party to the relevant claims handling arrangements:
 - (a) under which the licence holder agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or
 - (b) varying the relevant claims handling arrangements;other than as provided for under the terms of those arrangements.

Condition 3 : Transport Police

The licence holder shall at all times be a party to an agreement approved by the Secretary of State with the employer of the British Transport Police, for the provision to the licence holder of services specified for the time being as core police services in the code issued by the Police Committee established under the scheme made, or treated as if made, under section 132 of the Act.

Condition 4 : Complaints Handling Procedure

1. The licence holder shall comply with a procedure ("Complaints Procedure") approved by the Regulator within three months beginning with the day on which this licence came into force for handling complaints relating to licensed activities from its customers and potential customers.
2. Subject to paragraph 6, the licence holder shall not make any material alteration to the Complaints Procedure unless and until the licence holder has submitted the proposed alteration to either:
 - (i) the Regulator in respect of an alteration proposed before 1 February 2001; or
 - (ii) the Authority,and the proposed alteration has been approved by the Regulator before 1 February 2001, and thereafter the proposed alteration has been approved by the Authority.
3. The licence holder shall send a copy of the Complaints Procedure and of any material alteration to it (in each case following approval by the Regulator or the Authority where required under paragraphs 1 and 2) to the Authority.
4. Where the Authority requires the licence holder to carry out a review of the Complaints Procedure or any part or aspect thereof and the manner in which the same has been operated, with a view to determining whether any alterations should be made thereto, the licence holder shall promptly carry out such review and shall submit a written report to the Authority setting out the results or conclusions thereof.

5. The licence holder shall make such alterations to the Complaints Procedure, or the manner in which it is operated, as the Authority may reasonably require after the Authority has received a report under paragraph 4 and consulted the licence holder.
6. Paragraph 2 does not apply to any alteration made pursuant to paragraph 5.

Condition 5 : Provision of Services for Disabled People

1. The licence holder shall within 6 months beginning with the date on which this licence comes into force establish and thereafter comply with:
 - (a) a statement of policy; and
 - (b) a detailed body of arrangements, procedures, services and other benefits to be implemented or provided by the licence holder,

designed to protect the interests of people who are disabled in their use of trains of which the licence holder is the operator pursuant to this licence and to facilitate such use (together "the Disabled People's Protection Policy").
2. In establishing the Disabled People's Protection Policy and in making any alteration to it, the licence holder shall have due regard to the code of practice published by the Authority pursuant to section 70 or section 71B of the Act.
3. The licence holder shall not establish, or make any material alteration to, the Disabled People's Protection Policy unless and until:
 - (a) the Rail Passengers' Council has been consulted; and
 - (b) the licence holder has submitted the Disabled People's Protection Policy to the Regulator, and either:
 - (i) in the case of a proposed alteration submitted before 1 February 2001, the licence holder has submitted the proposed alteration to the Regulator;
or
 - (ii) in the case of a proposed alteration submitted on or after 1 February 2001, the licence holder has submitted the proposed alteration to the Authority,

and before 1 February 2001 the Regulator has approved the proposed alteration, and thereafter the Authority has approved the proposed alteration.
4. Where the Authority requires the licence holder to carry out a review of the Disabled People's Protection Policy or any part or aspect thereof and the manner in which the same has been implemented, with a view to determining whether any alteration should be made thereto, the licence holder shall promptly carry out such review and shall submit a written report to the Authority setting out the results or conclusions thereof.
5. The licence holder shall:

- (a) send a copy of the Disabled People's Protection Policy and of any alteration to it (in each case following approval by the Authority where required under paragraph 3) to the Authority and the Rail Passengers' Council;
 - (b) in a place of reasonable prominence at each station at which trains of which the licence holder is the operator pursuant to this licence are scheduled to call, display or procure the display of a notice giving the address from which a copy of the statement referred to in sub-paragraph 1(a) may be obtained; and
 - (c) give or send free of charge a copy of the statement referred to in sub-paragraph 1(a) (as altered) to any person who requests it.
6. Nothing in this Condition shall oblige the licence holder to undertake any action that entails excessive cost taking into account all the circumstances, including the nature and scale, of licensed activities.

B: Other Conditions

Condition 6 : Railway Group Standards

1. The licence holder shall comply with the Railway Group Standards applicable to licensed activities.

2. In this Condition:

"Railway Group Standards" means:

(a) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and

(b) operating procedures with which the operators of railway assets must comply, in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to the network licence held by Railtrack PLC.

Condition 7: Liability of Operators to Each Other

1. The licence holder shall, except in so far as the Regulator may otherwise consent, at all times be a party to such agreements or arrangements relating to certain matters relating to the liabilities of operators of railway assets to each other, as may have been approved by the Regulator as at the date on which this licence came into force (as amended from time to time).

2. Except with the consent of the Regulator, the licence holder shall not, in relation to any of the agreements or arrangements described in paragraph 1 (the "relevant claims handling arrangements"), enter into any agreement or arrangement with any other party to the relevant claims handling arrangements:

(a) under which the licence holder agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or

(b) varying the relevant claims handling arrangements,

other than as provided for under the terms of those arrangements.

Condition 8 : Environmental Matters

1. The licence holder shall, taking due account of any relevant guidance issued to it by the Regulator, within 6 months beginning with the day on which this licence came into force establish a written policy designed to protect the environment from the effect of licensed activities, together with operational objectives and management arrangements to give effect to the policy. The licence holder shall review the policy, the operational objectives and the management arrangements periodically and otherwise as appropriate. Nothing contained in this paragraph shall oblige the licence holder to undertake any

action that entails excessive cost taking into account all the circumstances, including the nature and scale, of operations of the type carried out by the licence holder.

2. The licence holder shall, upon establishment and any material modification of them, promptly send the Regulator a copy of the policy together with a general description of the operational objectives and management arrangements.
3. The licence holder shall act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

Condition 9 : Predatory Fares and Exclusionary Behaviour

1. Where:

- (a) the Regulator has given notice (an "investigation notice") to the licence holder (and, in the case of a service provided under a franchise agreement or an agreement under section 51 or 52 of the Act, or pursuant to directions under section 136(6) of the Act, to the Secretary of State and to the Authority):
 - (i) stating that the Regulator intends to investigate the level of fares specified in the notice which the licence holder is charging or proposes to charge in respect of any railway passenger services, for the purposes of determining whether the conditions in sub-paragraph (c)(i) to (iii) are satisfied;
 - (ii) setting out the preliminary views of the Regulator as to whether and in what respect those conditions are or may be satisfied and any other matters which he considers relevant to the investigation; and
 - (iii) specifying a period of at least 30 days within which representations may be made to the Regulator regarding the matters under investigation;
- (b) the period specified in the investigation notice has expired;
- (c) in the Regulator's opinion, having regard to any representations made to him and (in respect of sub-paragraphs (ii) and (iii)) taking into account any payments by the Authority in respect of the services in question:
 - (i) the licence holder is in a dominant position;
 - (ii) the fares in question are set at a level which does not cover such variable costs of the licence holder as ought reasonably to be covered; and
 - (iii) having regard to that dominant position, the purpose of the fares being set at that level is or is likely to be, unfairly to exclude or limit competition between the licence holder and any other passenger service operator; and

- (d) the Regulator has given a further notice (a "determination notice") to the licence holder (and, where appropriate, to the Secretary of State and the Authority) giving his opinion and the reasons for it and specifying those variable costs which the licence holder ought reasonably to cover in setting the level of those fares, the licence holder shall not charge fares in respect of those railway passenger services which do not cover the variable costs which the Regulator has specified in the determination notice.
2. Where otherwise than in respect of any fares charged by the licence holder:
- (a) the Regulator has given notice (an "investigation notice") to the licence holder (and, where the licence holder is a franchise operator or provides any services pursuant to an agreement under section 51 or 52 of the Act, or pursuant to directions under section 136(6) of the Act, to the Secretary of State and the Authority):
 - (i) stating that the Regulator intends to investigate any act or omission or any proposed act or omission of the licence holder specified in the notice for the purpose of determining whether that act or omission does or would unfairly exclude or limit competition in the supply of railway services;
 - (ii) setting out the preliminary views of the Regulator as to whether and in what respect the act or omission, or proposed act or omission, does or would so exclude or limit competition, and any other matters which he considers relevant to the investigation; and
 - (iii) specifying a period of at least 30 days within which representations may be made to the Regulator regarding the matters under investigation;
 - (b) the period specified in the investigation notice has expired;
 - (c) in the Regulator's opinion, having regard to any representations made to him:
 - (i) the licence holder is in a dominant position;
 - (ii) having regard to that dominant position, as regards any act or omission of the licence holder specified in the investigation notice, the purpose of that act or omission is, or the effect of that act or omission is likely to be, unfairly to exclude or limit competition in the supply of railway services; and
 - (iii) having regard to that dominant position, as regards any proposed act or omission of the licence holder specified in the investigation notice, the purpose of that proposed act or omission would be, or the effect of that proposed act or omission would be or would be likely to be, unfairly to exclude or limit competition in the supply of railway services; and

- (d) the Regulator has given a further notice (a "determination notice") to the licence holder (and, where appropriate, to the Secretary of State and the Authority) giving his opinion and his reasons for it and specifying the act or omission or proposed act or omission in question, the licence holder shall remedy or (in the case of a proposed act or omission) not engage in that act or omission.
3. Paragraph 2 shall not apply to any provisions of an agreement in so far as they are provisions by virtue of which it is an agreement to which the Restrictive Trade Practices Act 1976 applies or would apply but for any exemption under that Act.

Condition 10 : Restrictions on Certain Activities by the Licence Holder

1. The licence holder shall not operate any passenger train for the purpose of providing regular scheduled passenger services, except to the extent that the Regulator may otherwise consent.
2. The licence holder shall not operate any passenger train on behalf of another licence holder, for any purpose, except to the extent that the Regulator may otherwise consent.

3. In this condition -

"regular scheduled passenger services" means any railway passenger services advertised in any national timetable of railway passenger services published pursuant to the provisions of a network licence; and

"passenger train" means a tram used on a network for the purpose of carrying passengers by railway.

Condition 11 : Inspecting Officers

The licence holder shall allow HM Inspecting Officers of Railways, while exercising their powers under section 20 of the Health and Safety at Work etc. Act 1974 and on production of a valid warrant, to travel without charge on any train of which the licence holder is the operator pursuant to this licence.

Condition 12 : Timetabling

The licence holder shall provide Railtrack PLC with such information about licensed activities as may be reasonably necessary for Railtrack PLC to fulfil any obligation on it under its network licence to publish or procure the publication of a national timetable of railway passenger services.

Condition 13 : Provision of Information to the Regulator and the Authority

1. Subject to paragraphs 3 and 4, the licence holder shall furnish to the Regulator and the Authority such information as the Regulator may reasonably require for the purpose of carrying out any of his functions under Part I of the Act, or the Authority may

reasonably require for the purpose of carrying out any of its functions which relate to consumer protection conditions as defined in section 7A of the Act.

2. Information required to be furnished under this Condition shall be furnished in such form and manner and at such times as the Regulator or the Authority may reasonably require.
3. This Condition shall not require the licence holder to furnish to the Regulator or the Authority information for the purposes of any function of the Regulator under sections 69 and 71 of the Act, or any function of the Authority under section 71A of the Act.
4. Neither this Condition nor any other Condition shall require the licence holder to produce any documents or furnish any information:
 - (a) for any purpose referred to in section 58 of the Act which it could not be compelled to produce or furnish under that section; or
 - (b) which it could not be compelled to produce or give in evidence in civil proceedings in any court.
5. Subject to paragraph 4, nothing in this Condition shall prejudice any right of the Regulator or the Authority to require information under or pursuant to any other Condition. The right of the Regulator or the Authority to require information pursuant to this Condition shall not be affected by any right to require information under or pursuant to any other Condition.

Condition 14 : Payment of Fees

1. In respect of the year beginning on 1 April 1998 and in each subsequent year, the licence holder shall render to the Regulator a payment which is the aggregate of the following amounts:
 - (a) the annual fee applicable to this licence, as determined in accordance with the scale of fees published by the Regulator; and
 - (b) an amount which shall represent a fair proportion as determined by the Regulator of the amount estimated by the Regulator (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under section 13 of the Act with respect to this licence or any class of licence of which the Regulator determines that this licence forms part,

and the payment shall be rendered by the licence holder within such time as the Regulator may require, being not less than 30 days beginning with the day on which the Regulator gives notice to the licence holder of its amount.

Condition 15 : Change of Control

The licence holder shall, if any person obtains control of the licence holder, notify the Regulator, the Authority and the Secretary of State as soon as practicable thereafter.

Schedule - Terms as to Revocation

1. The Regulator may, after having consulted the Secretary of State and the Authority, revoke this licence by not less than 3 months' notice to the licence holder:
 - (a) if the licence holder agrees in writing with the Regulator that this licence should be revoked;
 - (b) if a final order has been made, or a provisional order has been confirmed under section 55 of the Act, in respect of any contravention or apprehended contravention by the licence holder of any Condition, and the licence holder does not comply with the order within a period of 3 months beginning on the day on which the Regulator gives notice to the licence holder stating that this licence will be revoked pursuant to this term if the licence holder does not so comply; provided that the Regulator shall not give any such notice before the expiration of the period within which an application could be made under section 57 of the Act in relation to the order in question or before any proceedings relating to any such application are finally determined;
 - (c) if the licence holder has not commenced carrying on licensed activities within one year beginning with the day on which this licence comes into force or if the licence holder ceases to carry on licensed activities for a continuous period of at least one year;
 - (d) if the licence holder is convicted of an offence under section 146 of the Act in making its application for this licence; or
 - (e) if a person obtains control of the licence holder and:
 - (i) the Regulator has not approved such obtaining of control;
 - (ii) within one month of that obtaining of control coming to the notice of the Regulator, the Regulator serves notice on the licence holder stating that the Regulator proposes to revoke this licence in pursuance of this paragraph unless the person who has obtained control of the licence holder ceases to have control of the licence holder within the period of 3 months beginning with the day of service of the notice; and
 - (iii) that cessation of control does not take place within that period.
2. The Regulator may, after having consulted the Secretary of State and the Authority, revoke this licence forthwith by notice to the licence holder if the licence holder commits a serious breach of the Railways (Safety Case) Regulations 2000.