

The Luxembourg Rail Protocol - Public Service, The Railways Act and Other UK Implementation Questions

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Confidentiality note

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Flexibility in the Rail Protocol

- Recognises different regimes and requirements
- Economic benefits v. policy considerations
- Use of Luxembourg Rail Protocol is NOT compulsory
- Opt In provisions
- Opt Out provisions
- Central depository of declarations



Options under the Cape Town Convention

- UK has already made some declarations
 - Rights having priority without registration – possessory liens for maintenance and repair
 - Registerable non-consensual rights or interests – rights already available under UK domestic law e.g. judgement creditors continue to be available
 - Transition period – application over pre-existing rights or interests
 - UK has already made some declarations
- Apply alongside Protocol-specific declarations



Options under the Rail Protocol

- Opt In
 - Contractual choice of law (Art VI)
 - Insolvency regime (Art IX)
 - Designated entry points (Art XIII)
 - Identification numbers (Art XIV)
- Opt Out
 - Continued application of national law precluding, suspending or governing the exercise of remedies in Art VII to Art IX (Art XXV)
- Some benefits of Cape Town Convention e.g. lower interest rates, may not be available depending on choices made
- RWG has produced a Ratification Matrix



Public Services and s30 Railways Act 1993

- s30 Railways Act 1993 (as amended)
 - Allows the Secretary of State or Scottish Ministers to continue to provide or secure the provision of passenger services where:
 - a franchise agreement under which the services are provided has been terminated or otherwise come to an end; and
 - no new franchise agreement has been entered in respect of continuing to provide such services
 - Direct agreements with lessors requiring continued provision of rolling stock
- Art XXV
 - Allows a declaration that rules of its law in force at the time of the declaration will continue to apply
 - Exercise of remedies under Art VII to Art IX are subject to the laws stated in the declaration
 - Only applied to “Public service railway rolling stock”



Article XXV and s30 Railways Act 1993

- What is “public service railway rolling stock”?
 - Rolling stock habitually used for the purpose of providing a service of “public importance”
 - A service for the carriage of freight or passengers
 - “Public importance” depends on the perception of the declaring State
 - The volume of traffic carried may be a relevant factor but of greatest importance is the nature of what is being transported.
- Art XXV embodies 4 key elements
 - Power to control the exercise of remedies (Art XXV(1))
 - The duty of preservation and maintenance (Art XXV(2))
 - The duty of payment (Art XXV(3))
 - The Contracting State’s duties (Art XXV(6))
- Art XXV(4)



Flexibility with clarity

- Pressure on a region to adopt similar options
- First in a region can set the agenda
- Barriers to adoption can be avoided
- Consultation with the industry
- Breadth of assets requires flexibility
- Clear notice of applicable options

