

*Status: Point in time view as at 29/12/2003. This version of this schedule contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, SCHEDULE 4A. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 4A

#### REVIEW OF ACCESS CHARGES BY REGULATOR]

##### Textual Amendments

**F1** Sch. 4A inserted (30.11.2000) by 2000 c. 38, ss. 231(2), 275(1), Sch. 24, Sch. 28 paras. 11, 17

#### [<sup>F1</sup> Introductory]

- 1 (1) For the purposes of this Schedule an access charges review is a review by the Regulator of the terms of an access agreement, or of the terms of an access agreement and the conditions of any linked licence, as to—
- (a) the amounts payable under the access agreement by one of the parties to the other; and
  - (b) the times at which, and manner in which, those amounts are payable.
- (2) In this Schedule “linked licence”, in relation to an access agreement, means a licence of which the holder is—
- (a) the facility owner, or installation owner, who is a party to the access agreement; or
  - (b) any other person who has an estate or interest in, or right over, the railway facility or network installation to which the access agreement relates.

VALID FROM 29/01/2007

#### [<sup>F2</sup>Scope of review

##### Textual Amendments

**F2** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 2 (with Sch. 4 para. 11); S.I. 2007/62, art. 2

- 1A (1) Where the Office of Rail Regulation undertakes such a review, it must, at the same time, review the conditions of every linked licence both—
- (a) in relation to the matters mentioned in paragraph 1(a) and (b); and
  - (b) in relation to the matters about which that Office is provided with information under paragraph 1D.
- (2) A review by that Office of both—

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- (a) the terms of an access agreement as to the matters mentioned in paragraph 1(a) and (b), and
- (b) the conditions of a linked licence,
- is referred to in this Schedule as an access charges review.
- (3) An access charges review must include a consideration of—
- (a) the time at which the next access charges review is to be undertaken in relation to both the access agreement in question and every linked licence; and
- (b) the circumstances in which it would be appropriate to undertake such a review before that time.
- (4) In this Schedule “linked licence”, in relation to an access agreement, means a licence of which the holder is—
- (a) the facility owner, or installation owner, who is a party to the agreement; or
- (b) a person other than that owner who has an estate or interest in the railway facility or network installation to which the agreement relates or who has a right over it.]

VALID FROM 29/01/2007

*[<sup>F3</sup>Response to request to carry out review*

**Textual Amendments**

**F3** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

- 1B Where—
- (a) the Secretary of State or the Scottish Ministers suggest to the Office of Rail Regulation that an access charges review should be carried out in any case, but
- (b) that Office decides not to carry out the suggested review,
- that Office must provide the Secretary of State or Scottish Ministers with its reasons for that decision.]

VALID FROM 29/01/2007

*[<sup>F4</sup>Notice of access charges review*

**Textual Amendments**

**F4** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

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- 1C (1) Before beginning an access charges review, the Office of Rail Regulation must give notice of its proposal to undertake the review to each of the following—
- (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the Treasury;
  - (d) the parties to the access agreement in question; and
  - (e) such other persons as that Office considers appropriate.
- (2) No notice is required to be given under sub-paragraph (1) to the Secretary of State or the Scottish Ministers—
- (a) in the case of the Secretary of State, if the facility or installation to which the relevant agreement relates is situated wholly in Scotland; or
  - (b) in the case of the Scottish Ministers, if the facility or installation to which the relevant agreement relates is situated wholly in England and Wales.
- (3) A notice under this paragraph must set out—
- (a) the period to which the Office of Rail Regulation expects the review to relate (“the review period”);
  - (b) the date by which the Secretary of State, the Scottish Ministers or (as the case may be) each of them needs to provide the information that has to be provided under paragraph 1D; and
  - (c) any conditions which that Office requires to be satisfied in the period ending with that date if it is to proceed with the review.
- (4) The period set out under sub-paragraph (3)(a) must be the one which—
- (a) begins with the time as from which the Office of Rail Regulation expects that any changes resulting from the review would fall to be implemented; and
  - (b) ends with the time as from which it thinks it likely (in the absence of special circumstances making an earlier review appropriate) that any changes resulting from the next access charges review in relation to the same agreement and licence would fall to be implemented.
- (5) The date set out under sub-paragraph (3)(b) must be not less than the following period after the date of the notice—
- (a) in a case which the Office of Rail Regulation is satisfied is a case of urgency, four weeks; and
  - (b) in any other case, three months.
- (6) Before setting out a date under sub-paragraph (3)(b) that is less than three months after the date of the notice, the Office of Rail Regulation must consult each of the persons to whom the notice is to be given.]

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*f<sup>5</sup>Duty to notify ORR about desired outputs and finances*

**Textual Amendments**

**F5** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

- 1D (1) Where a notice under paragraph 1C is given to the Secretary of State, he must provide the Office of Rail Regulation with—
- (a) information about what he wants to be achieved by railway activities in Great Britain as a whole during the review period; and
  - (b) such information as it is reasonable for him to provide about the public financial resources that are or are likely to become available to be applied during the review period for purposes that contribute (directly or indirectly) towards the achievement of what he wants.
- (2) Where a notice under paragraph 1C is given to the Scottish Ministers (whether instead of or as well as to the Secretary of State), they must provide the Office of Rail Regulation with—
- (a) information about what they want to be achieved by Scottish railway activities during the review period; and
  - (b) such information as it is reasonable for them to provide about the public financial resources that are or are likely to become available to be applied during that period for purposes that contribute (directly or indirectly) towards the achievement of what they want.
- (3) The information that may be provided as falling within sub-paragraph (1)(a) or (2)(a) includes objectives and standards to be achieved in the course of carrying on railway activities.
- (4) Those objectives and standards may include, in particular, objectives and standards with respect to any of the following matters—
- (a) the capacity (in terms of types and numbers of trains) of networks;
  - (b) the frequency of railway passenger services;
  - (c) journey times;
  - (d) reliability of railway services (both in terms of punctuality and otherwise);
  - (e) the taking of measures to prevent or mitigate overcrowding;
  - (f) levels and types of fares;
  - (g) the quality of information provided to passengers;
  - (h) the accessibility of railway services to people with disabilities;
  - (i) the carrying out of major projects to improve railway services;
  - (j) the protection of persons from dangers arising from the operation of railways.
- (5) In a case where information is also required to be provided by the Scottish Ministers, the information that is required to be provided by the Secretary of State does not include—

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- (a) any information about what he wants to be achieved by Scottish railway activities not relating to cross-border services; or
  - (b) information about any public financial resources so far as they appear to him to be available, or to be likely to become available, to be applied for purposes relating only to such activities.
- (6) An obligation of the Secretary of State or the Scottish Ministers to provide information under this paragraph—
- (a) must be discharged before the date set out in the notice given under paragraph 1C or, if a later date is fixed under sub-paragraph (7), by that later date; but
  - (b) may be discharged by a notification that refers that Office to information previously provided under this paragraph.
- (7) the Office of Rail Regulation may at any time, by notice to each of the persons to whom the notice under paragraph 1C was given, fix a later date for the provision of information under this paragraph.
- (8) Neither—
- (a) the Secretary of State, nor
  - (b) the Scottish Ministers,
- are required to provide information for the purposes of a review at any time after a decision has been made by the Office of Rail Regulation not to proceed with the review because of an actual or expected failure of the conditions set out under paragraph 1C(3)(c) to be satisfied.
- (9) In this paragraph “railway activities” means activities consisting in, or involving, any of the following—
- (a) providing railway services;
  - (b) making available railway facilities;
  - (c) making use of such facilities;
  - (d) using railway assets;
  - (e) allowing others to use such assets.
- (10) In this paragraph “Scottish railway activities” means activities which are railway activities by reference only to—
- (a) railway services which begin and end in Scotland;
  - (b) railway services in relation to which financial assistance is provided by the Scottish Ministers and which (without falling within paragraph (a)) begin or end in Scotland;
  - (c) railway facilities that are situated in Scotland; or
  - (d) railway assets so situated.
- (11) In this paragraph “public financial resources” means any of the following—
- (a) money charged on and payable out of the Consolidated Fund;
  - (b) money provided by Parliament;
  - (c) money payable out of the Scottish Consolidated Fund.]

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*[<sup>F6</sup>Suggestions about future reviews*

**Textual Amendments**

**F6** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

- 1E Where the Secretary of State or the Scottish Ministers provide the Office of Rail Regulation with information under paragraph 1D, he or they may also, at the same time, make a suggestion to that Office setting out his or their opinion about—
- (a) when the next access charges review should be undertaken in relation to both the access agreement in question and every linked licence; and
  - (b) the circumstances in which it would be appropriate to undertake such a review before that time.]

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*[<sup>F7</sup>Revision of outputs and financial information*

**Textual Amendments**

**F7** Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

- 1F (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that—
- (a) the information that has been provided to it by the Secretary of State or the Scottish Ministers under paragraph 1D, or
  - (b) the information, taking it all together, that has been so provided by the Secretary of State and the Scottish Ministers,
- shows that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of what he or they, or both of them, want to be achieved, that Office must so notify the Secretary of State or the Scottish Ministers or (as the case may be) each of them.
- (2) The Office of Rail Regulation must send a copy of every notification under sub-paragraph (1) to the Treasury.
  - (3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
    - (a) may revise any information provided to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
    - (b) if the information or such a suggestion is revised, must notify the revisions to that Office.

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- (4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or Scottish Ministers in accordance with sub-paragraph (1).
- (5) Where the Office of Rail Regulation has already given a notification under this paragraph with respect to any information, it is required to give a further notification under this paragraph with respect to that information, or any revision of it, only if—
  - (a) a revision has been made in response to its previous notification; and
  - (b) it has not previously given a notification in respect of an earlier revision of the information.]

VALID FROM 29/01/2007

*[<sup>F8</sup>Notification of likely adverse effect on interests of certain providers of railway services*

**Textual Amendments**

**F8** Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62](#), [art. 2](#)

- 1G
- (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that it is likely that the implementation of the review will adversely affect the interests of persons providing railway passenger services or of persons providing services for the carriage of goods by railway, that Office must so notify—
    - (a) the Secretary of State, in the case of a review notice of which was given to him under paragraph 1C; and
    - (b) the Scottish Ministers, in the case of a review notice of which was given to them under that paragraph.
  - (2) Where the Office of Rail Regulation gives a notification under sub-paragraph (1) in respect of a review relating to an access agreement to which a facility owner is a party, the notification must include—
    - (a) its assessment of the measures that the facility owner is likely to be required to take, as a consequence of the implementation of the review, in order to meet obligations of his arising under the access agreement in question or under any other access agreement to which he is a party; and
    - (b) its estimate of the cost to the facility owner of taking those measures.
  - (3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
    - (a) may revise any information provided under paragraph 1D to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
    - (b) if the information or such a suggestion is revised, must notify the revisions to that Office.
  - (4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or the Scottish Ministers in accordance with sub-paragraph (1).

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- (5) Where the Office of Rail Regulation has already given a notification under this paragraph, it is required to give a further notification under this paragraph only if—
- (a) information provided to it has been revised in response to its notification; and
  - (b) it has not previously given a notification in respect of an earlier revision of that information.]

VALID FROM 29/01/2007

*[<sup>F9</sup>Duty to have regard to information about desired outputs and finances etc.*

#### Textual Amendments

**F9** Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

- 1H (1) The Office of Rail Regulation must conduct an access charges review in the manner that it considers is most likely to secure that the implementation of the review will make the best and most practicable contribution to the achievement of—
- (a) what the Secretary of State wants to be achieved by railway activities in Great Britain as a whole; and
  - (b) what the Scottish Ministers want to be achieved by Scottish railway activities.
- (2) Where in the case of an access charges review the Office of Rail Regulation considers (notwithstanding any notification or revision under paragraph 1F or 1G) that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of, as the case may be—
- (a) everything that the Secretary of State wants to be achieved,
  - (b) everything that the Scottish Ministers want to be achieved, or
  - (c) everything that both the Secretary of State and the Scottish Ministers want to be achieved,
- it is to be for that Office to determine, for the purposes of the review, how much of what is wanted should be achieved using (but only for the purposes for which they may be applied) all the public financial resources that it considers are or are likely to be available.
- (3) In conducting an access charges review the Office of Rail Regulation must have regard to the consequences of compliance by a facility owner who is a party to the access agreement in question with any terms—
- (a) of that agreement, or
  - (b) of any other access agreement to which that facility owner is a party,
- that it considers are relevant to a matter notified under paragraph 1G (including, in particular, a term requiring the facility owner to pay compensation or to take mitigatory measures).
- (4) In considering the matters mentioned in paragraph 1A(3), the Office of Rail Regulation must have regard to any suggestion made under paragraph 1E, and to any revision of that suggestion.



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- (5) For the purposes of this paragraph—
- (a) expressions used in this paragraph and in paragraph 1D have the same meanings in this paragraph as in that;
  - (b) what the Secretary of State or the Scottish Ministers want must be determined in every case in accordance with the information provided in that case under paragraph 1D, and with any revisions notified under paragraph 1F(3)(b) or 1G(3)(b); and
  - (c) the Office of Rail Regulation must have regard to the financial information so provided and revised whenever considering what is likely to make the best and most practicable contribution to the achievement of what the Secretary of State or the Scottish Ministers want.]

*Main provisions*

- 2 (1) The procedure for the implementation of an access charges review shall be as provided for by paragraphs 4 to 16 of this Schedule.
- (2) And any procedure relating to the implementation of an access charges review for which the access agreement or any linked licence makes provision shall not apply.
- 3 An access charges review may include a consideration of—
- (a) the time at which the next access charges review in relation to the access agreement may be undertaken; and
  - (b) circumstances in which an access charges review in relation to the access agreement may be undertaken before that time.

*Review notice*

- 4 (1) The implementation of an access charges review shall be initiated by the Regulator giving notice (a “review notice”)—
- (a) stating his conclusions on the access charges review and the reasons why he reached those conclusions;
  - (b) specifying the relevant changes which he proposes to make for or in connection with giving effect to those conclusions;
  - (c) stating, in relation to each of the proposed relevant changes, the date on which he proposes that it should come into operation; and
  - (d) specifying the period (not being less than six weeks from the date of publication of the notice) within which objections with respect to any of the proposed relevant changes, or the date on which it is proposed that it should come into operation, may be made by a person within sub-paragraph (4)(a) or (b) below.
- (2) In this Schedule “relevant changes”, in relation to an access agreement, means—
- (a) amendments of the access agreement;
  - (b) modifications of the conditions of any linked licence; or
  - (c) both such amendments and such modifications;

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and references to the making of relevant changes are, in the case of amendments of the access agreement, references to directing the parties to the access agreement to make the amendments to the access agreement.

- (3) The review notice shall be given—
- (a) by publishing it in such manner as the Regulator considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed relevant changes; and
  - (b) by serving a copy on the persons specified in sub-paragraph (4) below.
- (4) The persons referred to in sub-paragraph (3)(b) above are—
- (a) the facility owner, or installation owner, who is a party to the access agreement;
  - (b) any other person who has an estate or interest in, or right over, the railway facility or network installation to which the access agreement relates and who the Regulator considers ought to be given a copy; and
  - (c) the beneficiary.
- (5) In this Schedule “the beneficiary”—
- (a) in relation to an access contract, has the meaning given by section 17(7) of this Act; and
  - (b) in relation to an installation access contract, has the meaning given by section 19(10) of this Act.

#### *Notice of agreement*

- 5 (1) If no objections are duly made by a person within paragraph 4(4)(a) or (b) above (or any that are so made are withdrawn), the Regulator shall give notice (a “notice of agreement”) stating that fact.
- (2) The notice of agreement shall be given—
- (a) by publishing it in such manner as the Regulator considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed relevant changes; and
  - (b) by serving a copy on the beneficiary.

#### *Termination notice*

- 6 (1) After a copy of a notice of agreement is served on the beneficiary, he may give notice (a “termination notice”) terminating the access agreement.
- (2) The termination notice shall specify the date on which the access agreement is to terminate.
- (3) The termination notice shall be given by serving a copy on—
- (a) the facility owner or installation owner;
  - (b) any other person who has an estate or interest in, or right over, the railway facility or network installation and who received a copy of the review notice; and
  - (c) the Regulator.

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- (4) The date specified by the termination notice as that on which the access agreement is to terminate shall be neither—
- (a) less than six months, nor
  - (b) more than one year,
- after the copy of the termination notice is served on the facility owner or installation owner.
- (5) The termination notice may not be given after the end of the period of 28 days beginning with the day on which the copy of the notice of agreement is served on the beneficiary.

*Review implementation notice*

- 7
- (1) After a copy of a notice of agreement is served on the beneficiary and the time within which a termination notice may be given by him has expired—
- (a) if he has not given a termination notice (or has withdrawn any notice which he has given), the Regulator shall (unless he acts under paragraph 8(2) below) give a review implementation notice; or
  - (b) if he has given (and not withdrawn) a termination notice, the Regulator may give such a notice.
- (2) A review implementation notice is a notice stating that the Regulator's conclusions on the access charges review are to be implemented as proposed in the review notice.
- (3) The review implementation notice shall—
- (a) specify the relevant changes which the Regulator is making; and
  - (b) state, in relation to each of the relevant changes, the date on which it comes into operation.
- (4) The review implementation notice shall be given—
- (a) by publishing it in such manner as the Regulator considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the relevant changes; and
  - (b) by serving a copy on the persons on whom a copy of the review notice was served, the Authority and the Health and Safety Executive.

*New review notice or Competition Commission reference*

- 8
- (1) This paragraph applies if—
- (a) objections are duly made by a person within paragraph 4(4)(a) or (b) above (and not withdrawn); or
  - (b) although no objections are duly made by a person within paragraph 4(4)(a) or (b) above (or any that are so made are withdrawn), relevant objections are duly made (and not withdrawn) in relation to a similar review notice relating to another access agreement.
- (2) The Regulator may—
- (a) give a new review notice under paragraph 4 above; or
  - (b) make a reference to the Competition Commission under paragraph 9 below.

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- (3) For the purposes of sub-paragraph (1) above—
  - (a) “relevant objections”, in relation to another access agreement, means objections by a person who is within paragraph 4(4)(a) or (b) above in relation to that other access agreement; and
  - (b) one review notice is similar to another if they make provision which, in the opinion of the Regulator, is to broadly the same effect.
- (4) Before acting under sub-paragraph (1) above, the Regulator shall consider the objections referred to in that sub-paragraph.
- (5) If the Regulator gives a new review notice under paragraph 4 above by virtue of sub-paragraph (2)(a) above, the references in that paragraph and paragraph 7(2) above to his conclusions on the access charges review shall be read in relation to the new notice as references to those conclusions as modified since the previous review notice (in particular as the result of any objections or representations made in relation to it).

*Reference to Competition Commission*

- 9 (1) A reference to the Competition Commission under this paragraph shall be so framed as to require them to investigate and report on the questions specified in sub-paragraph (2) below.
- (2) Those questions are—
  - (a) whether the matters considered on the access charges review which are specified in the reference operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the making of relevant changes.
- (3) The Regulator may, at any time, by notice given to the Competition Commission vary a reference under this paragraph—
  - (a) by adding to the matters specified in the reference; or
  - (b) by excluding from the reference some or all of the matters so specified.
- (4) On receipt of such a notice the Competition Commission shall give effect to the variation.
- (5) The Regulator may specify in a reference under this paragraph, or a variation of such a reference, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any relevant changes by which, in his opinion, those effects could be remedied or prevented.
- (6) As soon as practicable after making a reference under this paragraph, or a variation of such a reference, the Regulator—
  - (a) shall serve a copy of the reference or variation on the persons on whom a copy of the review notice was served; and

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- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (7) For the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this paragraph, the Regulator shall give to the Competition Commission any information in his possession which relates to matters falling within the scope of the investigation and—
- (a) is requested by the Competition Commission for that purpose; or
- (b) is information which, in his opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;
- and any other assistance which the Competition Commission may require, and which it is within his power to give, in relation to any such matters.
- (8) For the purpose of carrying out such an investigation, the Competition Commission shall take account of any information given to them for that purpose under sub-paragraph (7) above.
- (9) In determining for the purposes of this paragraph whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission shall have regard to the matters as respects which duties are imposed on the Regulator by section 4 of this Act.

*References under paragraph 9: time limits*

- [<sup>F10</sup>10 (1) Every reference under paragraph 9 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under paragraph 9 above shall not have effect (and no action shall be taken in relation to it under paragraph 12 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Regulator under sub-paragraph (3) below.
- (3) The Regulator may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under sub-paragraph (3) above in relation to the same reference.
- (5) The Regulator shall, in the case of an extension made by him under sub-paragraph (3) above—
- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by him under paragraph (a) above to the persons on whom a copy of the review notice was served.]

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*Status: Point in time view as at 29/12/2003. This version of this schedule contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, SCHEDULE 4A. (See end of Document for details)*

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### Textual Amendments

**F10** Sch. 4A: paras. 10, 10A substituted (20.6.2003) for para. 10 by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(a); S.I. 2003/1397, art. 2(1), Sch.

### *References under paragraph 9: application of Enterprise Act 2002*

[<sup>F11</sup>10A(1)] The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of sub-paragraph (1) above, have effect as if—

- (a) subsection (2) were omitted; and
- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—

- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
- (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
- (c) the words “by this Part” were omitted.

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F12</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.]

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#### Textual Amendments

- F11** Sch. 4A paras. 10, 10A substituted (20.6.2003) for Sch. 4A para. 10 by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 8, 12)
- F12** Words in Sch. 4A para. 10A(4) substituted (29.12.2003) by **Communications Act 2003 (c. 21)**, ss. 389, 411(2)(3), **Sch. 16 para. 4(4)** (with transitional provisions in **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (subject to art. 3(3))

#### Report on reference

- 11 (1) In making a report on a reference under paragraph 9 above, the Competition Commission shall include in the report—
- (a) definite conclusions on the questions comprised in the reference; and
  - (b) such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions.
- (2) Where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, they shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have.
- (3) Where they conclude that any adverse effects so specified could be remedied or prevented by the making of relevant changes, they shall in the report—
- (a) specify the relevant changes by which those effects could be remedied or prevented; and
  - (b) state, in relation to each of the relevant changes, the date on which it should come into operation.
- (4) A date stated in the report as that on which a relevant change should come into operation may be a date before the report is made, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.
- [<sup>F13</sup>(4A) For the purposes of paragraphs 12 to 14 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.]
- [<sup>F13</sup>(4B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 9 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- [<sup>F14</sup>(5) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 9 above.
- (5A) In making any report on a reference under paragraph 9 above the Competition Commission must have regard to the following considerations before disclosing any information.

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- (5B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (5C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5D) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5C)(a) or (b) above is necessary for the purposes of the report.]
- (6) A report of the Competition Commission on a reference under paragraph 9 above shall be made to the Regulator.
- (7) The Regulator shall, on receiving such a report, send a copy of it to the Secretary of State and the Authority.
- (8) Not less than 14 days after that copy is received by the Secretary of State, the Regulator shall send a copy to each of the persons on whom a copy of the review notice was served.
- (9) Not less than 24 hours after complying with sub-paragraph (8) above, the Regulator shall publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (10) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days after he receives his copy of the report, direct the Regulator to exclude that matter from—
- (a) every copy of the report sent under sub-paragraph (8) above, and
  - (b) the version of the report published under sub-paragraph (9) above.

#### **Textual Amendments**

- F13** Sch. 4A para. 11(4A)(4B) inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(b)(i); S.I. 2003/1397, art. 2(1), Sch.
- F14** Sch. 4A para. 11(5)-(5D) substituted (20.6.2003) for Sch. 4A para. 11(5) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(b)(ii); S.I. 2003/1397, art. 2(1), Sch.

#### *Changes following report*

- 12 (1) Where a report of the Competition Commission on a reference under paragraph 9 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,



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- (b) specifies effects adverse to the public interest which those matters have or may be expected to have,
- (c) includes conclusions to the effect that those effects could be remedied or prevented by the making of relevant changes, and
- (d) specifies relevant changes by which those effects could be remedied or prevented,

the Regulator shall, subject to the following provisions of this paragraph and paragraph 13 below, make such relevant changes as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Before making relevant changes under this paragraph, the Regulator shall have regard to the relevant changes specified in the report.

- (3) Before making relevant changes under this paragraph, the Regulator shall give notice—

- (a) stating that he proposes to make the relevant changes and setting out their effect,
- (b) stating the reasons why he proposes to make the relevant changes,
- (c) stating, in relation to each of the proposed relevant changes, the date on which he proposes that it should come into operation, and
- (d) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed relevant changes may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under sub-paragraph (3) above shall be given—

- (a) by publishing the notice in such manner as the Regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the relevant changes; and
- (b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.

- (5) Where (after considering any representations or objections which are duly made and not withdrawn) the Regulator proposes to make relevant changes under this paragraph, he shall give notice to the Competition Commission—

- (a) setting out the relevant changes he proposes to make;
- (b) stating the reasons why he proposes to make the relevant changes; and
- (c) stating, in relation to each of the proposed relevant changes, the date on which he proposes that it should come into operation.

- (6) The Regulator shall include with the notice under sub-paragraph (5) above a copy of any representations and objections which have been considered.

- (7) A date stated in a notice under sub-paragraph (3) or (5) above as that on which a relevant change should come into operation may be a date before the notice is given, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.

- (8) If the period within which a direction may be given by the Competition Commission under paragraph 13 below expires without such a direction being given, the Regulator shall make the relevant changes set out in the notice under sub-paragraph (5) above.

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- (9) If a direction is given by the Competition Commission under paragraph 13(1)(b) below, the Regulator shall make such of those relevant changes as are not specified in the direction.
- (10) As soon as practicable after making relevant changes under this paragraph, the Regulator shall send a copy of the relevant changes to the Authority and the Health and Safety Executive.

*Competition Commission's power to veto changes*

- 13 (1) The Competition Commission may, within the period of four weeks beginning with the day on which they are given notice under paragraph 12(5) above, give a direction to the Regulator—
- (a) not to make the relevant changes set out in the notice; or
  - (b) not to make such of those relevant changes as are specified in the direction.
- (2) The Secretary of State may, if an application is made to him by the Competition Commission within that period of four weeks, extend the period within which a direction may be given under this paragraph to one of six weeks beginning with the day on which the Competition Commission are given notice under paragraph 12(5) above.
- (3) The Competition Commission may give a direction under this paragraph only if the relevant changes to which it relates do not appear to them requisite for the purpose of remedying or preventing the adverse effects specified in their report on the reference under paragraph 9 above.
- (4) If the Competition Commission give a direction under this paragraph, they shall give notice—
- (a) setting out the relevant changes contained in the notice given under paragraph 12(5) above;
  - (b) setting out the direction; and
  - (c) stating the reasons why they are giving the direction.
- (5) A notice under sub-paragraph (4) above shall be given—
- (a) by publishing the notice in such manner as the Competition Commission consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the direction; and
  - (b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.

*Making of changes by Competition Commission*

- 14 (1) If the Competition Commission give a direction under paragraph 13 above, they shall themselves make such relevant changes as appear to them requisite for the purpose of remedying or preventing—
- (a) the adverse effects specified in their report on the reference under paragraph 9 above; or

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- (b) such of those adverse effects as would not be remedied or prevented by the relevant changes made by the Regulator under paragraph 12(9) above.
- (2) In exercising the function conferred by sub-paragraph (1) above, the Competition Commission shall have regard to the matters as respects which duties are imposed on the Regulator by section 4 of this Act.
- (3) Before making relevant changes under this paragraph, the Competition Commission shall give notice—
- (a) stating that they propose to make the relevant changes and setting out their effect,
  - (b) stating the reasons why they propose to make the relevant changes,
  - (c) stating, in relation to each of the proposed relevant changes, the date on which they propose that it should come into operation, and
  - (d) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A date stated in a notice under sub-paragraph (3) above as that on which a relevant change should come into operation may be a date before the notice is given, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.
- (5) A notice under sub-paragraph (3) above shall be given—
- (a) by publishing the notice in such manner as the Competition Commission consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the relevant changes; and
  - (b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.
- (5) As soon as practicable after making any relevant changes under this paragraph, the Competition Commission shall send a copy of those relevant changes to the Regulator, the Authority and the Health and Safety Executive.

*Paragraphs 13 and 14: supplementary*

- 15 <sup>F15</sup>(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.
- (2) In giving any notice under paragraph 13(4) or 14(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2E) and (2F) below, in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under paragraph 13 or 14 above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of sub-paragraph (2D) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which a copy of the relevant changes made by the Commission in connection with the reference concerned is sent to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”.
- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the

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exercise of its functions under paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words<sup>F16</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.

- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.]
- (3) For the purpose of assisting the Competition Commission in exercising their functions under paragraphs 13 and 14 above, the Regulator shall give to the Competition Commission any information in his possession which relates to matters relevant to the exercise of those functions and—
- (a) is requested by the Competition Commission for that purpose; or
  - (b) is information which, in his opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;
- and any other assistance which the Competition Commission may require, and which it is within his power to give, in relation to any such matters.
- (4) For the purpose of exercising those functions, the Competition Commission shall take account of any information given to them for that purpose under sub-paragraph (3) above.

#### Textual Amendments

- F15** Sch. 4A para. 15(1)-(2I) substituted (20.6.2003) for Sch. 4 para. 15(1)(2) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 30\(15\)\(c\); S.I. 2003/1397, art. 2\(1\), Sch.](#)
- F16** Words in Sch. 4A para. 15(2G) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 389, 411\(2\)\(3\), Sch. 16 para. 4\(4\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (subject to [art. 3\(3\)](#))

#### *Termination notice in response to proposals after reference*

- 16 (1) Where a notice is served on the beneficiary under paragraph 12(3) or 14(3) above, he may give notice (a “post-reference termination notice”) terminating the access agreement.
- (2) The post-reference termination notice shall specify the date on which the access agreement is to terminate.
- (3) The post-reference termination notice shall be given by serving a copy on—
- (a) the facility owner or installation owner;
  - (b) any other person who has an estate or interest in, or right over, the railway facility or network installation and who received a copy of the review notice; and
  - (c) the Regulator.

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- (4) The date specified by the post-reference termination notice as that on which the access agreement is to terminate shall be neither—
- (a) less than six months, nor
  - (b) more than one year,
- after the copy of the post-reference termination notice is served on the facility owner or installation owner.
- (5) The post-reference termination notice may not be given after the end of the period of 28 days beginning with the day on which the copy of the notice under paragraph 12(3) or 14(3) above is served on the beneficiary.

**Status:**

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