



Regulation of Railways Act 1873

1873 CHAPTER 48

An Act to make better provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected, therewith. [21st July 1873]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary

1 Short title.

This Act may be cited as the Regulation of Railways Act, 1873.

2 Commencement of Act.

This Act shall, except as herein is otherwise expressly provided, come into operation on the first day of September one thousand eight hundred and seventy-three, which date is in this Act referred to as the commencement of this Act.

3 Definitions.

In this Act—

The term " railway company " includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament:

The term " canal company " includes any person being the owner or lessee of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom constructed or carried on under the powers of any Act of Parliament:

The term " person " includes a body of persons corporate or unincorporate

The term " railway " includes every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic:

The term " canal " includes any navigation which has been made under or upon which tolls may be levied by authority of Parliament, and also the wharves and landing-places of and belonging to such canal or navigation, and used for the purposes of public traffic :

The term " traffic " includes not only passengers and their luggage, goods, animals, and other things conveyed by any railway company or canal company, hut also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company:

The term " mails " includes mail bags and post-letter hags

The term " special Act " means a local or local and personal Act, or an Act of a local and personal nature, and includes a Provisional Order of the Board of Trade confirmed, by Act of Parliament, and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864 :

The term " the Treasury " means the Commissioners of Her Majesty's Treasury for the time being :

The term " superior court " means in England any of Her Majesty's Superior Courts at Westminster, in Ireland any of Her Majesty's Superior Courts at Dublin, and in Scotland the Court of Session.

Appointment and Duties of Railway Commissioners

4 Appointment of Railway Commissioners.

For the purpose of carrying into effect the provisions of the Railway and Canal Traffic Act, 1854, and of this Act, it shall be lawful for Her Majesty, at any time after the passing of this Act, by warrant under the Royal Sign Manual, to appoint not more than three Commissioners, of whom one shall be of experience in the law and one of experience in railway business, and not more than two Assistant Commissioners, and upon the occurrence of any vacancy in the office of any such Commissioner or Assistant Commissioner from time to time in like manner to appoint some fit person to fill the vacancy. It shall be lawful for the Lord Chancellor, if he think fit, to remove for inability or misbehaviour any Commissioner appointed in pursuance of this Act.

The three Commissioners appointed under this Act (and in this Act referred to as the Commissioners) shall be styled the Railway Commissioners, and shall have an official seal which shall be judicially noticed. They may act notwithstanding any vacancy in their number. The said Assistant Commissioners shall hold office during the pleasure of Her Majesty.

5 Commissioners not to be interested in railway or canal stock.

Any person appointed a Commissioner under this Act shall within three calendar months after his appointment absolutely sell and dispose of any stock, share, debenture stock, debenture bond, or other security of any railway or canal company in the United Kingdom which he shall at the time of his appointment own or be interested in for his own benefit; and it shall not be lawful for any person appointed a Commissioner under this Act, so long as he shall hold office as such Commissioner, to purchase, take, or become interested in for his own benefit any such stock, share, debenture stock, debenture bond, or other security; and if any such stock, share, debenture stock, debenture bond, or other security, or any interest therein, shall come to or vest in such Commissioner- by will or succession, for his own benefit, he shall within three

calendar months after the same shall so come to or vest in him absolutely sell and dispose of the same or his interest therein.

It shall not be lawful for the Commissioners, except by consent of the parties to the proceedings, to exercise any jurisdiction by this Act conferred upon them in any case in which they shall be, directly or indirectly, interested in the matter in question.

The Commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with this provision.

6 Transfer to Commissioners of jurisdiction under 17 & 18 Vict. c.31 s.3.

Any person complaining of anything done or of any omission made in violation or contravention of section two of the Railway and Canal Traffic Act, 1854, or of section sixteen of the Regulation of Railways Act, 1868, or of this Act, or of any enactment amending or applying the said enactments respectively, may apply to the Commissioners, and upon the certificate of the Board of Trade alleging any such violation or contravention any person appointed by the Board of Trade in that behalf may in like manner apply to the Commissioners; and for the purpose of enabling the Commissioners to hear and determine the matter of any such complaint, they shall have and may exercise all the jurisdiction conferred by section three of the Railway and Canal Traffic Act, 1854, on the several courts and judges empowered to hear and determine complaints under that Act; and may make orders of like nature with the writs and orders authorised to be issued and made by the said courts and judges; and the said courts and judges shall, except for the purpose of enforcing any decision or order of the Commissioners, cease to exercise the jurisdiction conferred on them by that section.

7 Power for Commissioners to enable companies to explain alleged violation of law.

Where the Commissioners have received any complaint alleging the infringement by a railway company or canal company of the provisions of any enactment in respect of which the Commissioners have jurisdiction, they may, if they think fit, before requiring or permitting any formal proceedings to be taken on such complaint, communicate the same to the company against whom it is made, so as to afford them an opportunity of making such observations thereon as they may think fit.

8 Differences between railway and canal companies to be referred to Commissioners.

Where any difference between railway companies or between canal companies, or between a railway company and a canal company, is, under the provisions of any general or special Act, passed either before or after the passing of this Act, required or authorised to be referred to arbitration, such difference shall at the instance of any company party to the difference and with the consent of the Commissioners be referred to the Commissioners for their decision in lieu of being referred to arbitration: Provided, that the power of compelling a reference to the Commissioners in this section contained shall not apply to any case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which, a standing arbitrator having been appointed under any general or special Act, the

Commissioners are of opinion that the difference in question may more conveniently be referred to him. 9. Power to refer differences to Commissioners.

9 Power to refer differences to Commissioners.

Any difference to which a railway company or canal company is a party, may, on the application of the parties to the difference, and with the assent of the Commissioners, be referred to them for their decision.

10 Transfer to Commissioners of certain powers and duties of the Board of Trade.

The following powers and duties of the Board of Trade shall be transferred to the Commissioners; namely,

- (1) The powers of the Board of Trade under Part III. of the Railway Clauses Act, 1863, or under any special Act, with respect to the approval of working agreements between railway companies; and,
- (2) The powers and duties of the Board of Trade under section thirty-live of the Railway Clauses Act, 1863, with respect to the exercise by railway companies of their powers in relation to steam vessels :

And the provisions of the said Acts conferring such powers or imposing such duties, or otherwise referring to such powers or duties, shall, so far as is consistent with the tenor thereof, be read as if the Commissioners were therein named instead of the Board of Trade.

Explanation' and Amendment of Law

11 Explanation of 17 & 18 Vict. c.31 s.2 as to through traffic.

Whereas by section two of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal or railway and canal communication, or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals of the several companies be at all times afforded to the public in that behalf:

And whereas it is expedient to explain and amend the said enactment: Be it therefore enacted, that—

Subject as herein-after mentioned, the said facilities to be' so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates).

Provided as follows:

- (1) The company requiring the traffic to be forwarded shall give written notice- of the proposed through rate to each forwarding company, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded:
- (2) Each forwarding company shall, within the prescribed period after the receipt of such notice, by written notice inform the company requiring the traffic to be forwarded whether they agree to the rate and route; and, if they object to either, the grounds of the objection:
- (3) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration:
- (4) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the Commissioners for their decision:
- (5) If an objection be made to the granting of .the rate or to the route, the, Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly:
- (6) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective; in any other case the operation of the rate shall be suspended until the decision is given:
- (7) The Commissioners in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof:
- (8) It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route :
- (9) The prescribed period mentioned in this section shall be ten days, or such longer period as the Commissioners may from time to time by general order prescribe.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby.

12 Powers of Commissioners as to through rates.

Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

13 Provision for complaints by public authority in certain cases.

A complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by this Act, may be made to the Commissioners by a municipal or other public corporation, local or harbour board, without proof that the complainants are aggrieved by the contravention: Provided that a complaint shall not be entertained by the Commissioners in pursuance of this section unless such complaint is accompanied by a certificate of the Board of Trade to the effect that in their opinion the case in respect of which the complaint is made is a proper one to be submitted for adjudication to the Commissioners by such municipal or other public corporation, local or harbour board.

14 Publication of rates.

Every railway company and canal company shall keep at each of their stations and wharves a book or books showing every rate for the time being charged for the carriage of traffic, other than passengers and their luggage, from that station or wharf to any place to which they book, including any rates charged under any special contract, and stating the distance from that station or wharf of every station, wharf, siding, or place to which any such rate is charged.

Every such book shall during all reasonable hours be open to the inspection of any person without the payment of any fee.

The Commissioners may from time to time, on the application of any person interested, make orders with respect to any particular description of traffic, requiring a railway company or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, including therein tolls for the use of the railway or canal, for the use of carriages or vessels, or for locomotive power, and how much is for other expenses, specifying the nature and detail of such other expenses.

Any company failing to comply with the provisions of this section shall for each offence, and in the case of a continuing offence, for every day during which the offence continues, be liable to a penalty not exceeding five pounds, and such penalty shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, (as the case may require,) are for the time being recoverable and applicable.

15 Power to Commissioners to fix terminal charges.

The Commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering collection, delivery, and other services of a like nature; any decision of

the Commissioners under this section shall be binding on all courts and in all legal proceedings whatsoever.

16 Arrangements between railway companies and canal companies.

No railway company or canal company, unless expressly authorised thereto by any Act passed before the passing of this Act, shall, without the sanction of the Commissioners, to be signified in such manner as they may by general order or otherwise direct, enter into any agreement whereby any control over or right to interfere in or concerning the traffic carried or rates or tolls levied on any part of a canal is given to the railway company, or any persons managing or connected with the management of any railway; and any such agreement made after the commencement of this Act without such sanction shall be void.

The Commissioners shall withhold their sanction from any such agreement which is in their opinion prejudicial to the interests of the public.

Not less than one month before any such agreement is so sanctioned, copies of the intended agreement certified under the hand of the secretary of the railway company or one of the railway companies party or parties thereto, shall be deposited for public inspection at the office of the Commissioners, and also at the office of the clerk of the peace of the county, riding, or division in England or Ireland in which the head office of any canal company party to the agreement is situate, and at the office of the principal sheriff clerk of every such county in Scotland, and notice of the intended agreement, setting forth the parties between whom or on whose behalf the same is intended to be made, and such further particulars with respect thereto as the Commissioners may require, shall be given by advertisement in the London, Edinburgh, or Dublin Gazette, according as the head office of any canal company party to the agreement is situate in England, Scotland, or Ireland, and shall be sent to the secretary or principal officer of every canal company any of whose canals communicates with the canal of any company party to the agreement; and shall be published in such other way, if any, as the Commissioners for the purpose of giving notice to all parties interested therein by order direct.

17 Maintenanc of canals b railway companies,

Every railway company owning or having the management of any canal or part of a canal shall at all times keep and maintain such canal or part, and all the reservoirs, works, and conveniences thereto belonging, thoroughly repaired and dredged and in good working condition, and shall preserve the supplies of water to the same, so that the whole of such canal or part may be at all times kept open and navigable for the use of all persons desirous to use and navigate the same without any unnecessary hindrance, interruption, or delay.

Conveyance of Mails

18 Conveyan of mails.

Every railway company shall convey by any train all such mails as may be tendered for conveyance by such train, whether such mails be under the charge of a guard appointed by the Postmaster General or not, and notwithstanding that no notice in

writing requiring mails to be conveyed by such train has been given to the company by the Postmaster General.

Every railway company shall afford all reasonable facilities for the receipt and delivery of mails at any of their stations without requiring them to be booked or interposing any other delay.

Where the mails are in charge of a guard appointed by the Postmaster General, every railway company shall permit such guard, if he think fit, to receive and deliver them at any station by himself or his assistants, rendering him nevertheless such aid as he may require.

19 Remuneration for conveyance of mails.

Every railway company shall be entitled to reasonable remuneration for any services performed by them in pursuance of this Act with respect to the conveyance of mails, and such remuneration shall be paid by the Postmaster General.

Any difference between the Postmaster General and any railway company as to the amount of such remuneration, or as to any other question arising under this Act, shall be decided by arbitration, in manner provided by the Act of the session of the first and second years of the reign of Her present Majesty, chapter ninety-eight, or, at the option of such railway company, by the Commissioners.

20 Conveyance of mails o steam vessels.

Where a railway company use, maintain, or work, or are party to any arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, all provisions contained in any Act with respect to the conveyance of mails by railways shall, so far as they are applicable to the conveyance of mails by steam vessels, extend to the steam vessels so used, maintained, or worked,

Regulations as to Commissioners

21 Assistant Commissioners.

The Assistant Commissioners shall be subject to the orders of the Commissioners, and shall make such inquiries and reports and perform such other acts and services as the Commissioners may direct; and it shall be lawful for such Assistant Commissioners, Or either of them, to undertake such arbitration under the Act as the Commissioners with the consent of the parties to such arbitration may direct; and the said Assistant Commissioners for the purposes of such inquiries, reports, and arbitrations shall have and may exercise all powers of entry, inspection, summoning and examining witnesses, requiring the production of documents, and administering an oath by this Act conferred upon the Commissioners.

22 Salary of Commissioners.

There shall he paid to each of the Commissioners such salary, not exceeding three thousand pounds a year, and to each Assistant Commissioner such salary not exceeding fifteen hundred pounds a year, as the Treasury determine.

The salaries and expenses of the Commissioners and of their officers and of the Assistant Commissioners shall be paid out of moneys to be provided by Parliament,

23 Assessors.

The Commissioners may from time to time, in the exercise of any jurisdiction in this Act conferred on them, with the consent of the Treasury, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge. There shall be paid to such assessors such remuneration as the Treasury, upon the recommendation of the Commissioners, may direct.

24 Appointment of officers.

The Commissioners may from time to time appoint such officers and clerks with such salaries as the Commissioners, with the sanction of the Treasury, think fit.

25 Powers of Commissioners.

For the purposes of this Act the Commissioners shall, subject as in this Act mentioned, have full power to decide all questions whether of law or of fact, and shall also have the following powers ; that is to say,

- (a) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any place or building, being the property or under the control of any railway or canal company, the entry or inspection of which appears to them requisite;
- (b) They may require the attendance of all such persons as they think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make;
- (c) They may require the production of all books, papers, and documents relating to the matters before them;
- (d) They may administer an oath ;
- (e) They may when sitting in open court punish for contempt in like manner as if they were a court of record.

Every person required by the Commissioners to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred to a master of one of the superior courts, who, on request, under the hands of the Commissioners, shall ascertain and certify the proper amount of such expenses.

26 Orders of Commissioners.

Any decision or any order made by the Commissioners for the purpose of carrying into effect any of the provisions of this Act may be made a rule or order of any superior court, and shall be enforced either in the manner directed by section three of the Railway and Canal Traffic Act, 1854, as to the writs and orders therein mentioned, or in like manner as any rule or order of such court.

For the purpose of carrying into effect this section, general rules and orders may be made by any superior court in the same manner as general rules and orders may be made with respect to any other proceedings in such court.

The Commissioners may review and rescind or vary any decision or order previously made by them or any of them.

The Commissioners shall, in all proceedings before them under sections 6, 11, 12, and 13 of this Act, and may, if they think fit, in all other proceedings before them under this Act, at the instance of any party to the proceedings before them, and upon such security being given by the appellant as the Commissioners may direct, state a case in writing for the opinion of any superior court determined by the Commissioners upon any question which in the opinion of the Commissioners is a question of law.

The court to which the case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated or remit the matter to the Commissioners with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such order as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties : Provided that the Commissioners shall not be liable to any costs in respect or by reason of any such appeal.

The operation of any decision or order made by the Commissioners shall not be stayed pending the decision of any such appeal, unless the Commissioners shall otherwise order.

Save as aforesaid, every decision and order of the Commissioners shall be final.

27 **Sittings of Commissioners.**

The Commissioners shall sit at such times and in such places and conduct their proceedings in such manner as may seem to them most convenient for the speedy despatch of business; they may, subject as in this Act mentioned, sit either together or separately, and either in private or in open court, but any complaint made to them shall, on the application of any party to the complaint, be heard and determined in open court.

28 **Costs.**

The costs of and incidental to any proceeding before the Commissioners shall be in the discretion of the Commissioners.

29 **Power of Commissioners to make general orders.**

The Commissioners may at any time after the passing of this Act and from time to time make such general orders as may be requisite for the regulation of proceedings before them, including applications for and the stating of cases for appeal, and also for prescribing, directing, or regulating any matter which they are authorised by this Act to prescribe, direct, or regulate by general order, and also for enabling the Commissioners in cases to be specified in such general orders to exercise their jurisdiction by any one or two of their number : Provided, that any person aggrieved by any decision or order made in any case so specified may require a re-hearing by all the Commissioners; they may further make regulations for enabling them to carry into effect the provisions of this Act, and may from time to time revoke and alter any general orders or regulations made in pursuance of this Act.

Every general order, and every alteration in a general order, made in pursuance of this section shall be submitted to the Lord Chancellor for approval, and shall not come into force until it shall be approved by him. Every general order purporting to be made in pursuance of this Act shall, immediately after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within seven days after the then next meeting of Parliament, and if either House of Parliament by a resolution passed within two months after such general order has been so laid before the said House, resolve that the whole or any part of such general order ought not to continue in force, the same shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other general order in its place, or to anything done in pursuance of such general order before the date of such resolution; but, subject as aforesaid, every general order purporting to be made in pursuance of this Act shall be deemed to have been duly made and within the powers of this Act, and shall have effect as if it had been enacted in this Act.

30 Evidence of documents.

Every document purporting to be signed by the Commissioners, or any one of them, shall be received in evidence without proof of such signature, and until the contrary is proved shall be deemed to have been so signed and to have been duly executed or issued by the Commissioners.

31 Commissioners to make annual reports.

The Commissioners shall, once in every year, make a report to Her Majesty of their proceedings under this Act during the past year, and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

Miscellaneous

32 Determination of fees.

The Commissioners may, at any time after the passing, of this Act, by general order, with the concurrence of the Treasury, appoint the fees to be taken in relation to proceedings before them, and may from time to time, by general order, with the like concurrence, increase, reduce, or abolish all or any of such fees, and appoint new fees to be taken in relation to such proceedings.

33 Collection of fees.

The Public Offices Fees Act, 1866, shall apply to all fees taken in relation to any proceedings before the Commissioners.

Any fee or payment in the nature or lieu of a fee paid in respect of any proceedings before the Commissioners and collected otherwise than by means of stamps shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury from time to time direct, and carried to the Consolidated Fund.

34 Taxation of costs.

The costs, charges, and expenses of and incidental to any proceedings before the Commissioners which are incurred by any person shall, if required, be taxed in the same manner and by the same persons as if such proceedings were proceedings in a superior court.

35 Notices how to be given.

Any notice required or authorised to be given under this Act may be in writing or in print, or partly in writing and partly in print, and may be sent by post, and if sent by post shall be deemed to have been received at the time when the letter containing the same would have been delivered in the ordinary course of the post; and in proving such sending it shall be sufficient to prove that the letter containing the notice was prepaid and properly addressed and put into a post office.

36 Application of Act to Scotland.

In the application of this Act to Scotland—

- (1) The term "attending on subpoena before a Court of Record" means attending on citation the Court of Justiciary:
- (2) The Queen's and Lord Treasurer's Remembrancer shall perform the duties of a master of one of the superior courts under this Act.

Temporary Provisions

37 Duration of office and powers of Commissioners.

This Act shall continue in force for five years next after the passing of this Act, and thenceforth until the end of the then next session of Parliament, but the expiration of this Act shall not affect the validity of anything done before such expiration.