

*Draft Order laid before Parliament under section 58(4)(a) of the Government of Wales Act 2006,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2018 No. 000

CONSTITUTIONAL LAW DEVOLUTION, WALES

The Welsh Ministers (Transfer of Functions) (Railways) Order 2018

*Made - - - - 2018
Coming into force in accordance with article 1*

At the Court at Buckingham Palace, the day of
Present,
The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament in accordance with section 58(4)(a) of the Government of Wales Act 2006⁽¹⁾ and has been approved by the Welsh Ministers in accordance with section 58(4)(b) of that Act.

Her Majesty, in exercise of the powers conferred by section 58(1)(a), (b)(i) and (c) and (3) and section 157(2) of, and paragraph 2(1) of Schedule 4 to, that Act⁽²⁾, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Welsh Ministers (Transfer of Functions) (Railways) Order 2018.

(2) The following provisions of this Order come into force 21 days after the day on which this Order is made—

- (a) this article and articles 2 to 4;
- (b) the following provisions of the Schedule—

⁽¹⁾ 2006 c.32.

⁽²⁾ Section 58(1) was amended by the Marine and Coastal Access Act 2009 (c. 23), Schedule 4, paragraph 6(3) and by section 21(1) of the Wales Act 2017 (c. 4).

- (i) paragraphs 1 and 2;
- (ii) paragraph 5, except the amendment in sub-paragraph (3)(a) to the definition of “appropriate designating authority” in section 23(3) of the Railways Act 1993⁽³⁾ as it applies for the purposes of section 24 of that Act⁽⁴⁾;
- (iii) paragraphs 8 and 9;
- (iv) paragraph 10(1), (2)(c) and (d) and (4);
- (v) paragraph 12;
- (vi) paragraphs 24 to 26;
- (vii) paragraph 27, except so far as it inserts the definition of “Welsh protected railway company”;
- (viii) paragraphs 29 and 30;
- (ix) paragraph 32;
- (x) paragraphs 34 to 41;
- (xi) paragraph 44(1) and (2);
- (xii) paragraph 49;
- (xiii) paragraph 52(b)(ii);
- (xiv) paragraphs 55(1), (3) and (4)(a) and 56;
- (xv) paragraph 58(1) and (2)(a);
- (xvi) paragraphs 61 to 66;
- (xvii) paragraph 68.

(3) Except as provided by paragraph (2), this Order comes into force at 2.00 a.m. on 14th October 2018.

(4) The amendments made by the Schedule extend to England and Wales and Scotland only.

Amendments to the Railways Acts 1993 and 2005: transfer of functions etc

2.—(1) The Schedule amends—

- (a) the Railways Act 1993 (see Part 1), and
- (b) the Railways Act 2005 (see Part 2).

(2) Functions under those Acts, so far as exercisable by the Secretary of State in relation to Wales, are—

- (a) transferred to the Welsh Ministers, or
- (b) as the case may be, exercisable by the Welsh Ministers concurrently with the Secretary of State,

as provided for by amendments made by the Schedule to the provisions of those Acts relating to the functions in question and in accordance with articles 3 and 4.

(3) 1993 c. 43; the definition of “appropriate designating authority” was inserted by the Railways Act 2005 (c. 14), Schedule 1, paragraph 13(4).

(4) Section 24 was amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 14 and Schedule 13, Part 1; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(hh).

Effect of amendment to section 76 of the Railways Act 1993

3. The amendment made by paragraph 25 of the Schedule to subsection (6)(a) of section 76 of the Railways Act 1993 has effect to provide for the Secretary of State's function under that subsection to be exercisable concurrently with the Welsh Ministers only so far as it is exercisable in relation to Wales.

Transfer of property: exception for records

4.—(1) Paragraph 1(1) of Schedule 4 to the Government of Wales Act 2006 (transfer of property, rights and liabilities connected with transferred functions) does not apply to any documentary or electronic records to which the Secretary of State is entitled at the relevant time in connection with any function exercisable by the Secretary of State and transferred to the Welsh Ministers by this Order.

(2) In paragraph (1) the “relevant time” means the time when the provision of this Order providing for the transfer of the function in question comes into force.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

AMENDMENTS TO THE RAILWAYS ACTS 1993 AND 2005

PART 1

AMENDMENTS TO THE RAILWAYS ACT 1993

1. The Railways Act 1993 is amended as follows.
- 2.—(1) Section 4 (general duties of the Secretary of State and the Office of Rail and Road)(5) is amended as follows.
 - (2) In subsection (3C)—
 - (a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
 - (b) for “that Assembly” substitute “the Welsh Ministers”;
 - (c) for “the Assembly” substitute “the Welsh Ministers”.
 - (3) After subsection (3C) insert—

“(3D) The reference in subsection (3C) to functions transferred to the Welsh Ministers under or by virtue of Part 4 of the Railways Act 2005 includes a reference to functions which were transferred to the National Assembly for Wales under or by virtue of that Part and which became functions of the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.”
 - (4) In subsection (5)—
 - (a) in paragraph (ca), for “the National Assembly for Wales” substitute “the Welsh Ministers”;
 - (b) in paragraph (cb)—
 - (i) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
 - (ii) for “it” substitute “them”.
 - (5) In subsection (5A), for “the National Assembly for Wales” substitute “the Welsh Ministers”.
 - (6) In subsection (5D) in paragraph (b) for “the National Assembly for Wales” substitute “the Welsh Ministers”.
 - (7) In subsection (9) in the definition of “notified strategies and policies”—
 - (a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
 - (b) for the first “that Assembly” substitute “the Welsh Ministers”;
 - (c) for the second “that Assembly” substitute “them”.
3. In section 17 (access agreements: directions requiring facility owners to enter into contracts for the use of their railway facilities)(6) in subsection (4) after the second “Secretary of State” insert “, the Welsh Ministers”.

(5) Section 4 was amended by the Competition Act 1998 (c. 41), Schedule 10, paragraph 6(3); the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraph 12; section 200(4) of the Greater London Authority Act 1999 (c. 29); the Transport Act 2000 (c. 38), section 224 and Part 4 of Schedule 31; the Enterprise Act 2002 (c. 40), Schedule 26; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), section 3 and Part 1 of Schedule 13; the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), Schedule 1, paragraph 100; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(a).

(6) Section 17 was amended by the Transport Act 2000 (c. 38), section 233(1), paragraph 21 of Schedule 27 and Part 4 of Schedule 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 12 and Schedule 11, paragraph 3; regulation 21(5) of the Railways Regulations 1998 (S.I. 1998/1340);

4. In section 19 (access agreements: contracts for the use, on behalf of the Secretary of State, of installations comprised in a network)(7) in subsection (7) after the second “Secretary of State” insert “, the Welsh Ministers”.

5.—(1) Section 23 (passenger services to be subject to franchise agreements)(8) is amended as follows.

(2) After subsection (2ZC) insert—

“(2ZD) Where the Welsh Ministers designate Wales-only services, they may also designate Welsh components of Welsh services which—

- (a) they consider should be provided under the same franchise agreement as particular Wales-only services or a particular class of Wales-only services; and
- (b) are not exempt from designation under subsection (1) by virtue of section 24.

(2ZE) Nothing in this section requires the Secretary of State to designate a Welsh service so far as already designated by the Welsh Ministers.”

(3) In subsection (3)—

- (a) in the definition of “the appropriate designating authority”, after paragraph (a) omit “and” and insert—

“(aa) in relation to Wales-only services, means the Welsh Ministers; and”;

- (b) in the definition of “the appropriate franchising authority”, after paragraph (a) omit “and” and insert—

“(aa) in relation to a Welsh franchise agreement to the extent that the franchised services under it are Wales-only services or Welsh components of Welsh services, means the Welsh Ministers;

- (ab) in relation to a Welsh franchise agreement to the extent that the franchised services under it are services other than Wales-only services or Welsh components of Welsh services, means the Secretary of State;”;

- (c) in the definition of “franchise agreement” for the words “with the Secretary of State, with the Scottish Ministers or with the Secretary of State and the National Assembly for Wales jointly” substitute “to which the Secretary of State, the Scottish Ministers or the Welsh Ministers is or are party”.

6.—(1) Section 24 (exemption of passenger services from section 23(1))(9) is amended as follows.

(2) After subsection (3A) insert—

“(3B) Before granting a franchise exemption in respect of a Welsh service, the Secretary of State must consult the Welsh Ministers.”

(3) After subsection (12A) insert—

the Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), Schedule 1, paragraph 4; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(y).

(7) Section 19 was amended by the Transport Act 2000 (c. 38), sections 230(3) and 233(2) and Part 4 of Schedule 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 12 and Schedule 11, paragraph 3; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(aa).

(8) Section 23 was amended by the Transport Act 2000 (c. 38), section 212 and Schedule 16, paragraph 14 and the Railways Act 2005 (c. 14), Schedule 1, paragraph 13.

(9) Section 24 was amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 14 and Schedule 13, Part 1; and the Office of Rail Regulation (Change of Name) Regulations 2015 (SI 2015/1682), Schedule 1, paragraph 1(hh).

“(12B) A statutory instrument containing an order under this section made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

7.—(1) Section 24A (Secretary of State franchise exemptions: operator agreements)(10) is amended as follows.

(2) In the heading for “Secretary of State franchise exemptions” substitute “Franchise exemptions granted by Secretary of State or Welsh Ministers”.

(3) In subsection (1) after “the Secretary of State” insert “or the Welsh Ministers”.

(4) In subsection (2)—

(a) after the first “the Secretary of State” insert “or the Welsh Ministers”;

(b) after “that the Secretary of State considers appropriate” insert “or (as the case may be) that the Welsh Ministers consider appropriate”.

(5) In subsection (3) after “that the Secretary of State considers appropriate” insert “or (as the case may be) that the Welsh Ministers consider appropriate”.

8.—(1) Section 26 (invitations to tender for franchises)(11) is amended as follows.

(2) In subsections (4A), (4B) and (4D) after “the Secretary of State” insert “, the Welsh Ministers”.

(3) For subsection (4E) substitute—

“(4E) Before preparing, altering or replacing a statement of policy the Secretary of State, the Welsh Ministers and the Scottish Ministers must undertake such consultation as they consider appropriate.”

(4) In subsection (4F) after paragraph (a) omit “and” and insert—

“(aa) in the case of a statement prepared, altered or replaced by the Welsh Ministers, before the National Assembly for Wales; and”.

9.—(1) Section 27 (transfer of franchise assets and shares)(12) is amended as follows.

(2) In subsections (1) to (4) and (8) to (10) for “appropriate franchising authority” in each place substitute “responsible authority”.

(3) After subsection (10) insert—

“(10A) In this section the “responsible authority”—

(a) in relation to a Scottish franchise agreement, means the Scottish Ministers;

(b) in relation to a Welsh franchise agreement the franchised services under which consist of Wales-only services, means the Welsh Ministers; and

(c) in relation to any other franchise agreement, means the Secretary of State.”

10.—(1) Section 30 (duty of relevant franchising authority)(13) is amended as follows.

(10) Section 24A was inserted by the Deregulation Act 2015 (c. 20), Schedule 8, paragraph 8, and amended by the Cities and Local Government Devolution Act 2016 (c. 1), Schedule 5, paragraph 13.

(11) Section 26 was amended by the Transport Act 2000 (c. 38), Schedule 16, paragraph 16(3)(b); the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 15; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(ii).

(12) Section 27 was amended by the Transport Act 2000 (c. 38), Schedule 16, paragraph 17, Schedule 27, paragraph 24 and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, paragraph 17; and the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 13, paragraph 112.

(13) Section 30 was substituted by section 212(5) of the Transport Act 2000 (c. 38) and amended by the Railways Act 2005 (c. 14), section 18, paragraph 20 of Schedule 1, paragraph 4 of Schedule 11 and Part 1 of Schedule 13; and the Deregulation Act 2015 (c. 20), Schedule 8, paragraph 10.

(2) In subsection (3)(aa)—

- (a) for “the relevant franchising authority” substitute “the Secretary of State or the Scottish Ministers”;
- (b) for “the authority that it” substitute “the Secretary of State or the Scottish Ministers (as the case may be) that the Secretary of State or the Scottish Ministers”;
- (c) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
- (d) for “that Assembly” substitute “the Welsh Ministers”.

(3) In subsection (3A)—

- (a) for “and the Scottish Ministers” substitute “, the Scottish Ministers and the Welsh Ministers”;
- (b) at the end insert “, and the Welsh Ministers shall have power to provide Wales-only services and Welsh components of Welsh services.”

(4) In subsection (3C) omit the definition of “Welsh service” and the “and” before it.

11. In section 50 (exclusion of liability for breach of statutory duty)(**14**) in subsection (1) after “the Secretary of State” insert “and of the Welsh Ministers”.

12.—(1) Section 54 (exercise of functions for purpose of encouraging investment in the railways)(**15**) is amended as follows.

(2) In subsections (1) and (2) after “the Secretary of State” insert “, the Welsh Ministers”.

(3) In subsection (3), in the definition of “franchising functions”—

- (a) in the words before paragraph (a) after “the Secretary of State” insert “, the Welsh Ministers”;
- (b) in paragraph (a) after “the Secretary of State” insert “or of the Welsh Ministers”;
- (c) in paragraphs (b) and (c) after “the Secretary of State” insert “, the Welsh Ministers”.

13.—(1) Section 55 (orders for securing compliance)(**16**) is amended as follows.

(2) In subsection (5ZA)—

- (a) in the words before paragraph (a) after “nor the Scottish Ministers” insert “nor the Welsh Ministers”;
- (b) in paragraph (a) for “the Secretary of State has or (as the case may be) those Ministers have” substitute “the Secretary of State, the Scottish Ministers or the Welsh Ministers (as the case may be) has or have”;
- (c) in paragraph (c) for “the Secretary of State or (as the case may be) the Scottish Ministers” substitute “the Secretary of State, the Scottish Ministers or the Welsh Ministers (as the case may be)”.

(3) In subsection (5C) after “nor the Scottish Ministers” insert “nor the Welsh Ministers”.

(14) Section 50 was amended by the Transport Act 2000 (c. 38), Schedule 31, Part 4 and the Railways Act 2005 (c. 14), Schedule 11, paragraph 5 and Schedule 13, Part 1.

(15) Section 54 was amended by the Transport Act 2000 (c. 38), Schedule 16, paragraph 34 and the Railways Act 2005 (c. 14), Schedule 11, paragraph 6.

(16) Section 55 was amended by the Competition Act 1998 (c. 41), Schedule 10, paragraph 15(6) and (7); the Transport Act 2000 (c. 38), sections 225 and 226, paragraph 35 of Schedule 16, paragraphs 11 and 26 of Schedule 17, paragraph 30 of Schedule 27 and Part 4 of Schedule 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 21, Schedule 11, paragraph 7 and Schedule 13, Part 1; the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 14, paragraph 12; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(jj).

(4) In subsection (5D) in paragraph (a) after “the Scottish Ministers” insert “or the Welsh Ministers”.

(5) In subsection (7A) after paragraph (a) omit “and” and insert—

“(aa) in the case of an order made by the Welsh Ministers, to them, and”.

(6) In subsection (10) in the definition of “the appropriate authority”, for paragraph (b) substitute—

“(ab) in relation to a term of a Welsh franchise agreement, where the term relates solely to providing or securing the provision of a Wales-only service or a Welsh component of a Welsh service, the Welsh Ministers;

(ac) in relation to a term of a Welsh franchise agreement, where the term does not relate solely to providing or securing the provision of a Wales-only service or a Welsh component of a Welsh service, the Secretary of State;

(ad) in relation to a term of a franchise agreement that is not a Scottish franchise agreement or a Welsh franchise agreement, the Secretary of State;

(ae) in relation to a duty mentioned in subsection (11) which is imposed or arises in a Welsh case, the Welsh Ministers;

(af) in relation to a duty mentioned in subsection (11) which is imposed or arises in a case that is not a Scottish case or a Welsh case, the Secretary of State;”.

(7) In subsection (11A) omit the words after paragraph (c).

(8) In subsection (11B) for “In subsection (11A)” substitute “In this section”.

(9) After subsection (11B) insert—

“(11C) In subsection (10) “a Welsh case”, in relation to a closure, means—

(a) a case in which the Welsh Ministers are the national authority for the purposes of provisions of Part 4 of the Railways Act 2005 relating to the proposal for the closure;

(b) a case in which it is the Welsh Ministers who make a determination under section 34 of that Act (minor modifications) in relation to the closure; or

(c) a case in which the closure is a closure of which notice is given under section 37 of that Act (experimental passenger services) and the proposal relates to a Wales-only service.”

14. In section 56 (procedural requirements for section 55 orders)(**17**) in subsection (2A) after “the Scottish Ministers” insert “and the Welsh Ministers”.

15.—(1) Section 57A (penalties)(**18**) is amended as follows.

(2) In subsection (2) after paragraph (a) omit “and” and insert—

“(aa) in the case of a penalty imposed by the Welsh Ministers, to them; and”.

(3) In subsection (5)—

(a) in the words before paragraph (a) after “the Scottish Ministers” insert “nor the Welsh Ministers”;

(17) Section 56 was amended by the Transport Act 2000 (c. 38), section 226(2), Schedule 16, paragraph 36, Schedule 17, paragraph 12 and Schedule 27, paragraph 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 22; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(kk).

(18) Section 57A was inserted by section 225(1) of the Transport Act 2000 (c. 38) and amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 23; the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 14, paragraph 13; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(ll).

- (b) in paragraph (a) for “the Secretary of State has or (as the case may be) those Ministers have” substitute “the Secretary of State, the Scottish Ministers or the Welsh Ministers (as the case may be) has or have”;
- (c) in paragraph (c) for “the Secretary of State or (as the case may be) the Scottish Ministers” substitute “the Secretary of State, the Scottish Ministers or the Welsh Ministers (as the case may be)”.

16. In section 57B (statement of policy)(**19**), in subsections (1) and (3) to (6), after “the Scottish Ministers” insert “, the Welsh Ministers”.

17. In section 57C (procedural requirements for penalties)(**20**) in subsection (3) after “the Scottish Ministers” insert “and the Welsh Ministers”.

18.—(1) Section 59 (meaning and effect of railway administration order)(**21**) is amended as follows.

(2) In subsection (6)—

(a) in paragraph (za) after sub-paragraph (i) omit “and” and insert—

“(ia) in relation to a Welsh protected railway company or a company subject to a railway administration order that was such a company when the order was made, means the Welsh Ministers; and”;

(b) after paragraph (c) insert—

“(d) “Welsh protected railway company” means a protected railway company that is such a company only in respect of activities carried on by it as franchise operator in relation to a Welsh franchise agreement the franchised services under which consist of Wales-only services.”

19. In section 63 (government financial assistance where railway administration orders made)(**22**) in subsections (1) and (2) after “Scottish protected railway company” insert “or a Welsh protected railway company”.

20.—(1) Section 64A (financial assistance by Scottish Ministers)(**23**) is amended as follows.

(2) In the heading at the end insert “or Welsh Ministers”.

(3) In subsection (1), for “, the Scottish Ministers” substitute “or a Welsh protected railway company, the Scottish Ministers or the Welsh Ministers (as the case may be)”.

(4) In subsection (2)—

(a) after “Scottish Ministers” insert “or the Welsh Ministers (as the case may be)”;

(b) in paragraph (a) after “Scottish protected railway company” insert “or Welsh protected railway company”.

(5) In subsections (3), (4) and (5) after “Scottish Ministers” insert “or the Welsh Ministers (as the case may be)”.

(19) Section 57B was inserted by section 225(1) of the Transport Act 2000 (c. 38) and amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3 and Schedule 8; the Railways Act 2005 (c. 14), Schedule 1, paragraph 24; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(mm).

(20) Section 57C was inserted by section 225(1) of the Transport Act 2000 (c. 38) and amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 25; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(nn).

(21) Section 59 was amended by the Railways Act 2005 (c. 14), section 49(1) and Schedule 13, Part 1; the Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), Schedule 1, paragraph 3(5); and the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), Schedule 1, paragraph 143(3).

(22) Section 63 was amended by the Railways Act 2005 (c. 14), section 50(1) and Schedule 11, paragraph 9.

(23) Section 64A was inserted by section 50(2) of the Railways Act 2005 (c. 14).

- (6) In subsection (6) after “Scottish Ministers” insert “and the Welsh Ministers”.
- (7) In subsection (9)—
 - (a) after “Scottish Ministers” insert “or the Welsh Ministers”;
 - (b) for the first “them” substitute “the Scottish Ministers or the Welsh Ministers (as the case may be)”.
- (8) In subsections (10) and (11) after “Scottish Ministers” insert “or the Welsh Ministers”.

21.—(1) Section 73 (keeping of register by the Secretary of State)(**24**) is amended as follows.

(2) In subsection (2) after “the register maintained under section 73A” insert “or the register maintained under section 73B”.

- (3) In subsection (7)—
 - (a) after “the Scottish Ministers” in each place insert “, the Welsh Ministers”;
 - (b) for “it” substitute “them or (as the case may be) it”.

22.—(1) Section 73A (keeping of register by the Scottish Ministers)(**25**) is amended as follows.

- (2) In subsection (6) after “the Secretary of State” insert “, the Welsh Ministers”.
- (3) In subsection (7)—
 - (a) after “the Secretary of State” insert “, the Welsh Ministers”;
 - (b) for “him or (as the case may be) it” substitute “him, them or it (as the case may be)”.

23. After section 73A (keeping of register by the Scottish Ministers) insert—

“73B. Keeping of register by the Welsh Ministers

- (1) The Welsh Ministers must maintain a register.
- (2) The register must be kept in such form and at such premises as the Welsh Ministers determine.
- (3) Subject to subsections (4) and (5), the Welsh Ministers must cause the provisions of each of the following to be entered in the register—
 - (a) every designation made by them under section 23 and every variation or revocation of such a designation;
 - (b) every franchise exemption granted by them;
 - (c) every franchise agreement to which they are a party;
 - (d) every amendment of such a franchise agreement as it relates to a Wales-only service or a Welsh component of a Welsh service, other than amendments which are unlikely to have a material effect on the provision of services under the agreement or on any sums payable under it;
 - (e) every determination made by them under section 34 of the Railways Act 2005 that a closure is a minor modification or that closures of a particular description are minor modifications;

(24) Section 73 was amended by the Transport Act 2000 (c. 38), Schedule 17, paragraph 16, Schedule 27, paragraph 37 and Schedule 31, Part 4; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 30, Schedule 11, paragraph 11 and Schedule 13, Part 1; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(tt).

(25) Section 73A was inserted by the Railways Act 2005 (c. 14), Schedule 1, paragraph 31 and amended by the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(uu).

- (f) every revocation of a determination made by them under that section in relation to a description of closures;
- (g) every condition agreed to under subsection (5) of that section in connection with a determination made by them;
- (h) every final or provisional order made by them;
- (i) every revocation by them of such an order;
- (j) every notice given by them under section 55(6) of a decision not to make such an order;
- (k) every penalty imposed by them under section 57A;
- (l) every statement of policy published by them under section 57B.

(4) The Welsh Ministers may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as they consider it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in the Welsh Ministers' opinion, seriously and prejudicially affect the interests of that individual; and
- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Welsh Ministers' opinion, seriously and prejudicially affect the interests of that body.

(5) If it appears to the Welsh Ministers that the entry of any provision in the register would be against the public interest they may decide not to enter it in the register.

(6) The contents of the register must be available for inspection, at any time and free of charge, by the Secretary of State, the Scottish Ministers or the Office of Rail and Road.

(7) The Secretary of State, the Scottish Ministers and the Office of Rail and Road may each require the Welsh Ministers to supply them with a certified copy of a part of the register, or with a certified extract from it, free of charge.

(8) The references in subsection (7) to a certified copy or a certified extract are references to a copy or extract that has been certified by the Welsh Ministers to be a true copy or extract.

(9) In subsection (3)(d) "amendment", in relation to a franchise agreement, means any amendment however described, including variations (whether or not effected in accordance with the terms of the agreement or by a modification of it) of the property, rights and liabilities which from time to time constitute the franchise assets."

24.—(1) Section 74 (annual and other reports of the Office of Rail and Road)(**26**) is amended as follows.

(2) In subsection (1) after "the Secretary of State", insert "and the Welsh Ministers".

(3) After subsection (3) insert—

"(3ZA) The Welsh Ministers must lay a copy of every report made to them under subsection (1) before the National Assembly for Wales and must arrange for copies to be published in such manner as they consider appropriate."

(26) Section 74 was amended by the Transport Act 2000 (c. 38), Schedule 31, Part 4; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraphs 3 and 14 and Schedule 8; the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 6, paragraph 79; the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), Schedule 5, paragraph 13(2); and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(vv).

25. In section 76 (general railway duties of Passengers' Council)(**27**) in subsection (6)(a) after "the Secretary of State" insert "or the Welsh Ministers".

26.—(1) Section 80 (duty of certain persons to furnish information to the Secretary of State, the Scottish Ministers or the Office of Rail and Road on request)(**28**) is amended as follows.

(2) In the heading after "Secretary of State," insert "the Welsh Ministers,".

(3) In subsections (1) and (3) and the first sentence of subsection (4), after "the Secretary of State," in each place insert "the Welsh Ministers,".

(4) In subsection (4), in the second sentence, after "the Secretary of State" insert " , the Welsh Ministers".

(5) In subsection (8) after "the Secretary of State," insert "the Welsh Ministers,".

27. In section 83 (interpretation of Part 1)(**29**) in subsection (1) at the appropriate places insert the following definitions—

““Wales-only service” has the meaning given by section 57 of the Railways Act 2005;

““Welsh component of a Welsh service” has the meaning given by section 57 of the Railways Act 2005;”;

““Welsh franchise agreement” means a franchise agreement the franchised services under which consist of or include Wales-only services;”;

““Welsh protected railway company” has the meaning given by section 59(6)(d);”;

““Welsh service” has the meaning given by section 57 of the Railways Act 2005;”.

28.—(1) Section 130 (penalty fares)(**30**) is amended as follows.

(2) In subsection (1) after "Secretary of State" insert " , the Welsh Ministers".

(3) After subsection (1) insert—

“(1ZA) The power of the Welsh Ministers under this section to make provision for and in connection with the imposition of requirements on persons present on or leaving stations is exercisable only in relation to persons present on or leaving relevant Welsh stations in connection with the use of railway passenger services provided under Welsh franchise agreements or secured to any extent by the Welsh Ministers.

(1ZB) In subsection (1ZA) “relevant Welsh stations” are stations wholly in Wales that are used for the purposes of railway passenger services provided under Welsh franchise agreements or secured to any extent by the Welsh Ministers.

(1ZC) The power of the Welsh Ministers under this section to make provision for and in connection with the imposition of requirements on persons travelling by, present on or leaving trains is exercisable only in relation to persons—

(a) travelling by or present on trains in Wales used for the purposes of—

(27) Section 76 was amended by the Transport Act 2000 (c. 38), section 228, paragraph 20 of Schedule 17 and Part 4 of Schedule 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraphs 3 and 15; the Railways Act 2005 (c. 14), Schedule 1, paragraph 32, Schedule 6, paragraph 5, Schedule 13, Part 1; the Passengers' Council (Non-Railway Functions) Regulations 2010 (S.I. 2010/439), Schedule 1, paragraph 6(3); and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(ww).

(28) Section 80 was amended by the Transport Act 2000 (c. 38), Schedule 27, paragraph 38 and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, paragraph 33 and Schedule 11, paragraph 12; the Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), Schedule 1, paragraph 3; the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(xx); and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (S.I. 2016/645), Schedule 1, paragraph 3.

(29) Section 83 has been amended but none of the amendments is relevant.

(30) Section 130 was amended by section 206 of the Greater London Authority Act 1999 (c. 29) and by the Railways Act 2005 (c. 14), section 47, Schedule 1, paragraph 34 and Schedule 13, Part 1.

- (i) a Wales-only service; or
- (ii) any other railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers, except where subsection (1ZD) applies; or

(b) leaving such trains at stations wholly in Wales.

(1ZD) This subsection applies where—

- (a) the next scheduled call to be made by the service is at a station wholly or partly in England and the previous scheduled call was at a station wholly in Wales (but not where the train is at a scheduled call wholly in Wales); or
- (b) the next scheduled call to be made by the service is at a station wholly in Wales and the previous scheduled call was at a station wholly or partly in England.

(1ZE) The power of the Secretary of State under this section to make provision for and in connection with the imposition of requirements on persons present on or leaving stations is not exercisable in relation to persons falling within subsection (1ZA).

(1ZF) The power of the Secretary of State under this section to make provision for and in connection with the imposition of requirements on persons travelling by, present on or leaving trains is not exercisable in relation to persons falling within subsection (1ZC)."

(4) In subsection (2) in paragraph (p) after "the Secretary of State" insert ", the Welsh Ministers".

(5) After subsection (11A) insert—

"(11B) A statutory instrument containing regulations made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the National Assembly for Wales."

29.—(1) Section 135 (concessionary travel for railway staff etc)(**31**) is amended as follows.

(2) After subsection (3) insert—

"(3A) The Welsh Ministers may—

- (a) promote the provision of staff concessionary travel in Wales, and
- (b) enter into agreements or other arrangements concerning the provision of staff concessionary travel in Wales."

(3) In subsection (6) for "and the Scottish Ministers" substitute ", the Scottish Ministers and the Welsh Ministers".

(4) In subsection (7)—

- (a) for "subsection (3)" substitute "subsections (3) and (3A)";
- (b) for "that subsection" substitute "those subsections";
- (c) after "the Secretary of State undertakes, or" insert "the Welsh Ministers or".

(5) In subsections (8) and (9) for "subsection (3)" substitute "subsections (3) and (3A)".

(6) In subsection (13) for "the reference in subsection (2)" substitute "the references in subsections (2) and (3A)".

30.—(1) Section 136 (grants and subsidies)(**32**) is amended as follows.

(31) Section 135 was amended by the Transport Act 2000 (c. 38), Schedule 27, paragraph 40 and Schedule 31, Part 4, and by the Railways Act 2005 (c. 14), Schedule 1, paragraph 35.

(32) Section 136 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 184(2); the Transport Act 2000 (c. 38), Schedule 16, paragraph 51; the Railways Act 2005 (c. 14), Schedule 11, paragraph 14 and Schedule 13, Part 1; the Local Transport Act 2008 (c. 26), Schedule 4, paragraph 58(3); the Transport for London

(2) In subsection (3)(ab), for “the National Assembly for Wales” substitute “the Welsh Ministers”.

(3) In subsection (3A)—

(a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;

(b) in paragraph (b) for “the Assembly is” substitute “the Welsh Ministers are”.

31. In section 143 (regulations and orders)(**33**) in subsections (1), (3) and (4) after “the Secretary of State” insert “, the Welsh Ministers”.

32. In section 145 (general restrictions on disclosure of information)(**34**), in subsection (2), in paragraphs and (aa) after “the Secretary of State” in each place insert “, the Welsh Ministers”.

33. In Schedule 7 (transfer of relevant activities in connection with railway administration orders) in paragraph 2(**35**) after sub-paragraph (9) insert—

“(10) A statutory instrument containing an order under this paragraph made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

PART 2

AMENDMENTS TO THE RAILWAYS ACT 2005

34. The Railways Act 2005 is amended as follows.

35. In section 1 (transfer etc of SRA functions and abolition)(**36**) in subsection (3)(c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

36. In section 6 (financial assistance etc from the Secretary of State) in subsection (4)(b) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

37. In section 7 (notification of assistance from Secretary of State for freight services) in subsection (3)(b) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

38.—(1) Section 10 (franchising and financial assistance in relation to Wales) is amended as follows.

(2) In subsection (1) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

(3) Omit subsection (2).

(4) In subsection (3) for “(whether or not in a case falling within subsection (2)) the National Assembly for Wales” substitute “the Welsh Ministers”.

(5) In subsection (4)—

(a) for “The National Assembly for Wales” substitute “The Welsh Ministers”;

(b) for “it does so” substitute “they do so”.

(Consequential Provisions) Order 2003 ([S.I. 2003/1615](#)), Schedule 1, paragraph 19; and regulation 2 of the Railways (Public Service Obligations) Regulations 2010 ([S.I. 2010/402](#)).

(33) Section 143 was amended by the Railways Act 2005 ([c. 14](#)), Schedule 11, paragraph 15.

(34) Section 145(2) was amended by the Railways and Transport Safety Act 2003 ([c. 20](#)), Schedule 2, paragraph 3; the Railways Act 2005 ([c. 14](#)), Schedule 11, paragraph 16(1) and Schedule 13, Part 1; the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 ([S.I. 2014/892](#)), Schedule 1, paragraph 109(2); and the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 1(aaa). There are other amendments to section 145 which are not relevant.

(35) Paragraph 2 was amended by the Transport Act 2000 ([c. 38](#)), Schedule 16, paragraph 54(5)(c) and by section 49 of the Railways Act 2005 ([c. 14](#)).

(36) Section 1 was amended by the Passengers’ Council (Non-Railway Functions) Order 2010 ([S.I. 2010/439](#)), Schedule 1, paragraph 9(2).

(6) In subsection (6), for “The National Assembly for Wales” substitute “The Welsh Ministers”.

(7) In subsection (8)—

(a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;

(b) for “the Assembly considers” substitute “the Welsh Ministers consider”.

(8) In subsection (9)—

(a) for “its” substitute “their”;

(b) for “the National Assembly for Wales” substitute “the Welsh Ministers”;

(c) for “it” substitute “them”.

(9) In subsection (10)—

(a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;

(b) for “its” substitute “their”.

39.—(1) Section 11 (notification of assistance from Welsh Assembly for freight services) is amended as follows.

(2) In the heading for “Assembly” substitute “Ministers”.

(3) In subsection (1) for “the National Assembly for Wales makes or modifies a scheme setting out how it proposes to exercise its powers” substitute “the Welsh Ministers make or modify a scheme setting out how they propose to exercise their powers”.

(4) For subsection (2) substitute—

“(2) This section also applies if the Welsh Ministers make or modify a determination of the criteria that they will apply in exercising their functions under such a scheme.”

(5) In subsection (3), for “The National Assembly for Wales” substitute “The Welsh Ministers”.

40.—(1) Section 12 (transfer schemes at end of franchising agreements) is amended as follows.

(2) In subsection (3)—

(a) after paragraph (a) insert—

“(aa) the Welsh Ministers;”;

(b) in paragraph (c) after “the Secretary of State” insert “, the Welsh Ministers”;

(c) after paragraph (d) omit “and” and insert—

“(da) a company which is jointly owned by the Secretary of State and the Welsh Ministers; and”.

(3) In subsection (8), in the definition of “the appropriate national authority”—

(a) before paragraph (a) insert—

“(za) in relation to a franchise agreement the franchised services under which consist of Wales-only services, the Welsh Ministers;”;

(b) omit paragraph (a);

(c) after paragraph (b) insert—

“(c) in relation to any other franchise agreement, the Secretary of State;”.

41. In section 19 (the Passengers’ Council)(37) in subsection (2)(c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

(37) Section 19 was amended by the Passengers’ Council (Non-Railway Functions) Order 2010 ([S.I. 2010/439](#)), article 4 and Schedule 1, paragraph 9(3).

42. In section 22 (proposal by service operator to discontinue non-franchised services)(**38**) in subsection (11) after paragraph omit “and” and insert—

“(aa) in relation to a proposal relating to services all of which are Wales-only services, means the Welsh Ministers; and”.

43. In section 23 (proposal by funding authority to discontinue non-franchised services)(**39**) in subsection (9) after paragraph omit “and” and insert—

“(aa) in relation to a proposal relating to services all of which are Wales-only services, means the Welsh Ministers; and”.

44.—(1) Section 24 (proposals to discontinue franchised or secured services)(**40**) is amended as follows.

(2) In subsection (10)—

- (a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
- (b) for “the Assembly” substitute “the Welsh Ministers”.

(3) In subsection (11) after paragraph (a) omit “and” and insert—

“(aa) in relation to a proposal relating to services all of which are Wales-only services, means the Welsh Ministers; and”.

45. In section 25 (proposal to discontinue excluded services)(**41**) in subsection (7) in the definition of “the national authority” after paragraph omit “and” and insert—

“(aa) in relation to a proposal relating to one or more services each of which is a Wales-only service, means the Welsh Ministers; and”.

46.—(1) Section 29 (proposal by operator to close station)(**42**) is amended as follows.

(2) In subsection (10)(b) after “the Secretary of State” insert “, subject to subsection (11)”.

(3) After subsection (10) insert—

“(11) The Welsh Ministers, rather than the Secretary of State, are “the national authority” in relation to a proposal relating to a station, or part of a station, that—

- (a) is wholly in Wales, and
- (b) is, immediately before the notice under subsection (3) is given, a station to which subsection (12) applies or part of such a station.

(12) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”

47.—(1) Section 30 (proposal by funding authority to close station)(**43**) is amended as follows.

(2) In subsection (8)(b) after “the Secretary of State” insert “, subject to subsection (9)”.

(38) Section 22 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 3(a).

(39) Section 23 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 3(b).

(40) Section 24 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 3(c).

(41) Section 25 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 3(d).

(42) Section 29 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 3(h).

(43) Section 30 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1 paragraph 3(i).

(3) After subsection (8) insert—

“(9) The Welsh Ministers, rather than the Secretary of State, are “the national authority” in relation to a proposal relating to a station, or part of a station, that—

(a) is wholly in Wales, and

(b) is, when the proposal is made, a station to which subsection (10) applies or part of such a station.

(10) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”

48.—(1) Section 31 (proposal to discontinue operation of secured station)(**44**) is amended as follows.

(2) In subsection (9)(b) after “the Secretary of State” insert “, subject to subsection (10)”.

(3) After subsection (9) insert—

“(10) The Welsh Ministers, rather than the Secretary of State, are “the national authority” in relation to a proposal relating to a station, or part of a station, that—

(a) is wholly in Wales, and

(b) is, when the proposal is made, a station to which subsection (11) applies or part of such a station.

(11) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”

49. In section 33 (closure requirements)(**45**) in subsection (2)(c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

50. In section 34 (minor modifications)(**46**) after subsection (2) insert—

“(2A) It is the Welsh Ministers who may make a determination that a closure is a minor modification, or that closures of a particular description are minor modifications, where the only closures to which the determination relates consist in—

(a) the discontinuance of one or more Wales-only services; or

(b) the discontinuance of a station, or part of a station, that—

(i) is wholly in Wales, and

(ii) is a station to which subsection (2B) applies or part of such a station.

(2B) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”

51.—(1) Section 35 (closures eligible to be treated as minor modifications) is amended as follows.

(2) In subsection (6)—

(a) for “the Secretary of State or the Scottish Ministers” substitute “the national authority”;

(44) Section 31 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 3(j).

(45) Section 33 was amended by the Local Transport Act 2008 (c. 26), Schedule 4, paragraph 66(3); the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraph 119; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 3(l).

(46) Section 34 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 3(m).

- (b) for “the Secretary of State or, as the case may be, the Scottish Ministers” substitute “the national authority”.
- (3) After subsection (6) insert—
- “(6A) Except where subsection (6B) or (7) applies, the Secretary of State is the national authority for the purposes of subsection (6).
- (6B) The Welsh Ministers are the national authority for the purposes of subsection (6) where the only closures to which the order relates consist in—
- (a) the discontinuance of one or more Wales-only services; or
- (b) the discontinuance of a station, or part of a station, that—
- (i) is wholly in Wales, and
- (ii) is a station to which subsection (6C) applies or part of such a station.
- (6C) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”
- (4) In subsection (7)—
- (a) for “It is the Scottish Ministers who may make an order under subsection (6)” substitute “The Scottish Ministers are the national authority for the purposes of subsection (6)”;
- (b) omit the words after paragraph (e).
- 52.** In section 36 (designation of experimental passenger services)(47) in subsection (1)—
- (a) after paragraph (b) insert—
- “(ba) if it is a Wales-only service, by the Welsh Ministers;”;
- (b) in paragraph (c)—
- (i) for “a Welsh service” substitute “any other Welsh service”;
- (ii) for “the National Assembly for Wales” in each place substitute “the Welsh Ministers”.
- 53.**—(1) Section 38 (services, networks and stations excluded by order) is amended as follows.
- (2) In subsection (2) after paragraph (b) omit “and” and insert—
- “(ba) as respects a railway passenger service which is a Wales-only service, means the Welsh Ministers;
- (bb) as respects a station, or part of a station, that—
- (i) is wholly in Wales, and
- (ii) is a station to which subsection (2A) applies or part of such a station, means the Welsh Ministers; and”.
- (3) After subsection (2) insert—
- “(2A) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”
- 54.**—(1) Section 40 (substitute road services) is amended as follows.

(47) Section 36 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 3(n).

(2) In subsection (4) in paragraph (a) after the second “service” insert “(other than a Welsh service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers)”.

(3) In that subsection, after paragraph (a) insert—

- “(aa) in a case where that railway passenger service is a Welsh service provided under a Welsh franchise agreement (but is not a Wales-only service), the Secretary of State in relation to the service to the extent that it is not a Welsh component of a Welsh service;
- (ab) in the case of a railway passenger service that is a Welsh service secured to any extent by the Welsh Ministers (but is not a Wales-only service), the Secretary of State in relation to the service to the extent that it is not so secured;”.

(4) In that subsection for paragraph (c) substitute—

- “(c) in a case where that railway passenger service is a Wales-only service, the Welsh Ministers;
- (d) in a case where that railway passenger service is a Welsh service provided under a Welsh franchise agreement (but is not a Wales-only service), the Welsh Ministers in relation to the service to the extent that it is a Welsh component of a Welsh service;
- (e) in a case where that railway passenger service is a Welsh service secured to any extent by the Welsh Ministers, the Welsh Ministers in relation to the service to the extent that it is so secured;”.

55.—(1) Section 42 (closures guidance) is amended as follows.

(2) After subsection (1) insert—

“(1A) It is the duty of the Welsh Ministers to publish guidance for the purposes of the provisions of this Part so far as they have effect in relation to—

- (a) proposals to discontinue any Wales-only service or services; or
- (b) proposals to discontinue the use or operation of any station, or part of a station, that—
 - (i) is wholly in Wales, and
 - (ii) is a station to which subsection (1B) applies or part of such a station.

(1B) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”

(3) In subsection (2)—

- (a) for “or the National Assembly for Wales, or both of them,” substitute “or the Welsh Ministers (or the Secretary of State and the Welsh Ministers)”;
- (b) in paragraph (b), for “the National Assembly for Wales provides” substitute “the Welsh Ministers provide”;
- (c) in paragraph (c) for “both of them provide funding” substitute “the Secretary of State and the Welsh Ministers provide funding”.

(4) In subsection (3)—

- (a) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
- (b) in paragraph (a) at the end insert “(other than any Wales-only service or services)”;
- (c) in paragraph (c) after “in Wales” insert “(other than a station to which subsection (1B) applies or part of such a station)”.

56.—(1) Section 43 (procedure relating to publication and modification of closures guidance) is amended as follows.

(2) After subsection (2) insert—

“(2A) The Welsh Ministers must lay before the National Assembly for Wales a copy of any guidance or revised guidance, or modifications of guidance, which they publish or make under section 42(1A).”.

(3) After subsection (3) insert—

“(3A) Guidance published by the Welsh Ministers under section 42(1A) (and any modifications of that guidance or any revised version of that guidance published by the Welsh Ministers under section 42(6)) are to have effect in accordance with an order made by the Welsh Ministers.”.

(4) In subsection (4) for “the National Assembly for Wales” in each place substitute “the Welsh Ministers”.

(5) In subsections (5) and (6) after “subsection (3)” insert “or (3A)”.

57. In section 44 (exclusion of liability for breach of statutory duty) in subsection (2)(g)—

(a) after “the Secretary of State” insert “, the Welsh Ministers”;

(b) after “to secure” insert “(to any extent)”.

58.—(1) Section 45 (interpretation of Part 4)(**48**) is amended as follows.

(2) In subsection (1)—

(a) in the definition of “railway funding authority”, for “the National Assembly for Wales” substitute “the Welsh Ministers”;

(b) in the definition of “secured service” after “the Secretary of State” insert “, the Welsh Ministers”;

(c) in the definition of “secured”, after “the Secretary of State” insert “, the Welsh Ministers”.

(3) In subsection (5) after paragraph (a) insert—

“(aa) in relation to a person who provides no financial assistance for purposes mentioned in subsection (4)(b) other than—

(i) funding in relation to the provision of Wales-only services, or

(ii) funding in relation to the operation or use of a station, or part of a station, that is wholly in Wales and is a station to which subsection (5A) applies or part of such a station,

means the Welsh Ministers;”.

(4) After subsection (5) insert—

“(5A) This subsection applies to a station at which the only scheduled calls made by any railway passenger service are those made by a railway passenger service provided under a Welsh franchise agreement or secured to any extent by the Welsh Ministers.”

59.—(1) Section 46 (bye-laws)(**49**) is amended as follows.

(2) After subsection (5) insert—

(48) Section 45 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 3(p).

(49) Section 46 was amended by the Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), Schedule 1, paragraph 5.

“(5A) The Welsh Ministers may by order revoke or amend any bye-laws falling within subsection (5)(a) or (b) to the extent that they regulate—

- (a) the use and working of a relevant asset that is a Welsh asset;
- (b) travel on or by means of such an asset;
- (c) the maintenance of order on such an asset; or
- (d) the conduct of persons while on such an asset.”

(3) After subsection (8) insert—

“(9) In this section “Welsh asset” means an asset (other than an asset that is part of a network) that is—

- (a) permanently situated in Wales; or
- (b) used only in Wales.”

60. After section 48 (code of practice for disabled rail users in Scotland) insert—

“48A. Code of practice for disabled rail users in Wales

(1) The Welsh Ministers may prepare, and from time to time to revise, a code of practice for protecting the interests of users of relevant Welsh services who are disabled.

(2) The Welsh Ministers must publish a code prepared by them under this section, and every revision of it, in such manner as they consider appropriate.

(3) Before preparing or revising a code under this section the Welsh Ministers must consult the Disabled Persons Transport Advisory Committee established under section 125 of the Transport Act 1985.

(4) In this section “relevant Welsh service” means—

- (a) a Wales-only service which is provided under a Welsh franchise agreement or secured by the Welsh Ministers;
- (b) a Welsh component of a Welsh service which is provided under a Welsh franchise agreement or secured by the Welsh Ministers;
- (c) a station service provided in relation to a station at which scheduled calls are made only by—
 - (i) a Wales-only service which is provided under a Welsh franchise agreement or secured by the Welsh Ministers, or
 - (ii) a Welsh component of a Welsh service which is provided under a Welsh franchise agreement or secured by the Welsh Ministers.”

61. In section 51 (ORR to assist and advise national authorities)(**50**) for subsection (3) substitute—

“(3) It shall be the duty of the Office of Rail and Road to comply with every reasonable requirement of the Welsh Ministers—

- (a) to provide them with information or advice about a matter connected with a function or other activity of theirs in relation to railways or railway services; or
- (b) otherwise to provide them with assistance in relation to a matter that is connected with such a function or activity.”

62.—(1) Section 56 (powers exercisable by statutory instrument) is amended as follows.

(50) Section 51 was amended by the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 3(q).

- (2) In subsection (1) after “the Secretary of State” insert “, the Welsh Ministers”.
- (3) In subsection (2)(b) after “the House of Commons” insert “, or of the National Assembly for Wales”.
- (4) In subsection (3)—
- (a) after paragraph (b) omit “and”;
 - (b) after paragraph (c) insert—
 - “(d) in relation to an order or regulations made by the Welsh Ministers, means a resolution of the National Assembly for Wales; and
 - (e) in relation to an order made by the Secretary of State and the Welsh Ministers jointly, means a resolution of either House of Parliament or of the National Assembly for Wales.”
- (5) In subsection (5)—
- (a) after “the Secretary of State” insert “, the Welsh Ministers”;
 - (b) before “Scottish Ministers” insert “the”.
- 63.**—(1) Section 57 (meaning of “Wales-only service” and “Welsh service”) is amended as follows.
- (2) In subsection (1)—
- (a) in the definition of “Wales-only service”—
 - (i) after paragraph (a) omit “and”;
 - (ii) omit paragraph (b);
 - (b) at the appropriate place insert—

““Welsh component of a Welsh service” means a Welsh service (other than a Wales-only service) so far as it involves the carriage of passengers by railway in Wales, but not any part of the service excluded by subsection (1A);”.
- (3) After subsection (1) insert—
- “(1A) For the purposes of the definition of “Welsh component of a Welsh service” in subsection (1) the following parts of a service are excluded—
- (a) any part of the service after the last scheduled call wholly in Wales before each occasion when the service leaves Wales;
 - (b) any part of the service before the first scheduled call wholly in Wales after each occasion when the service enters Wales; and
 - (c) any part of the service between two scheduled calls not wholly in Wales where there is no intervening scheduled call wholly in Wales.”
- (4) Omit subsections (2) and (3).
- 64.** In section 58 (general interpretation)(**51**) in subsection (1) in the definition of “Wales-only service” and “Welsh service”, after ““Wales-only service”” insert “, “Welsh component of a Welsh service””.
- 65.** In Schedule 5 (Passengers’ Council)(**52**) in paragraph 11(3)(c), for “the National Assembly for Wales” substitute “the Welsh Ministers”.

(51) Section 58 was amended by the Local Transport Act 2008 (c. 26), Schedule 4, paragraph 66(4).

(52) Schedule 5 was amended by the Passengers’ Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), Schedule 1, paragraph 9(7).

66. In Schedule 7 (consultations under Part 4)(**53**) in paragraph 3(2)(c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

67. In Schedule 9 (bye-laws by railway operators) in paragraph 1—

(a) in sub-paragraph (1) in the definition of “appropriate national authority” after paragraph (b) omit “and” and insert—

“(ba) where the relevant assets by reference to which the bye-laws are or were made are all Welsh assets, the Welsh Ministers; and”.

(b) after sub-paragraph (2) insert—

“(2A) In sub-paragraph (1) “Welsh asset” has the meaning given by section 46(9).”

68.—(1) Schedule 10 (taxation provisions relating to transfer schemes)(**54**) is amended as follows.

(2) In paragraph 32 (group relief) after the second “the Secretary of State” insert “, the Welsh Ministers”.

(3) In paragraph 34(1) (interpretation of Schedule) in the definition of “national authority”, in paragraph (c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for certain functions of the Secretary of State under the Railways Act 1993 and the Railways Act 2005 to be transferred from the Secretary of State to the Welsh Ministers so far as those functions are exercisable in relation to Wales, and for certain other functions of the Secretary of State under those Acts, so far as exercisable in relation to Wales, to be exercisable concurrently by the Welsh Ministers and the Secretary of State. It does so by making amendments to those Acts: see article 2 and the Schedule. In the case of the amendment made by paragraph 25 of the Schedule to section 76(6)(a) of the Railways Act 1993, it is article 3 of the Order that provides for the particular function under that section to be exercised concurrently only so far as it is exercisable in relation to Wales.

The Schedule also replaces a number of references in the Railways Acts 1993 and 2005 to the National Assembly for Wales with references to the Welsh Ministers where functions of the Assembly have already been transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Article 4 provides that paragraph 1(1) of Schedule 4 to the Government of Wales Act 2006 does not apply to records to which the Secretary of State is entitled in connection with any function transferred by the Order. That paragraph provides (among other things) for the transfer of property held in connection with transferred functions, but paragraph 2 of that Schedule allows for it to be disapplied.

(53) Schedule 7 was amended by the Passengers’ Council (Non-Railway Functions) Order 2010 ([S.I. 2010/439](#)), Schedule 1, paragraph 9(8).

(54) Schedule 10 was amended by the Finance Act 2008 ([c. 9](#)), Schedule 2, paragraph 70(g); the Corporation Tax Act 2009 ([c. 4](#)), Schedule 1, paragraph 667; the Corporation Tax Act 2010 ([c. 4](#)), Schedule 1, paragraph 478; and the Office of Rail Regulation (Change of Name) Regulations 2015 ([S.I. 2015/1682](#)), Schedule 1, paragraph 3(v).

Draft Legislation: *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Welsh Ministers (Transfer of Functions) (Railways) Order 2018 No. 631*

A full impact assessment has not been produced for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.