

SCHEDULE

AMENDMENTS TO THE RAILWAYS ACTS 1993 AND 2005

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)(1) 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”.

(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”.

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

(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)(2) in subsection (2)(c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

42. In section 22 (proposal by service operator to discontinue non-franchised services)(3) 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)(4) 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)(5) is amended as follows.

(2) In subsection (10)—

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

(2) 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).

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

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

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

- (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)(6) 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)(7) 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)(8) is amended as follows.
- (2) In subsection (8)(b) after “the Secretary of State” insert “, subject to subsection (9)”.
- (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)(9) 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—

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

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

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

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

- (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)(**10**) in subsection (2)(c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

50. In section 34 (minor modifications)(**11**) 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”;
- (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)”;

(10) 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).

(11) 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) omit the words after paragraph (e).

52. In section 36 (designation of experimental passenger services)(**12**) 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.

(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.

(12) 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) 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)(**13**) 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)(**14**) is amended as follows.
- (2) After subsection (5) insert—
- “(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.

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

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

(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)(15) 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.

(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”—

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

- (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)(**16**) 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)(**17**) in paragraph 11(3)(c), for “the National Assembly for Wales” substitute “the Welsh Ministers”.
- 66.** In Schedule 7 (consultations under Part 4)(**18**) 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)(**19**) 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”.

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

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

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

(19) 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*