



Transport and Works Act 1992

1992 CHAPTER 42

PART II

SAFETY OF RAILWAYS ETC

CHAPTER I

OFFENCES INVOLVING DRINK OR DRUGS

Preliminary

26 Transport systems to which Chapter I applies

- (1) This Chapter applies to transport systems of any of the following kinds—
 - (a) a railway;
 - (b) a tramway;
 - (c) a system which uses another mode of guided transport and is specified for the purposes of this Chapter by an order made by the Secretary of State.
- (2) This Chapter shall not apply to a transport system unless it is used, or is intended to be used, wholly or partly for the carriage of members of the public.
- (3) The power to make orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Principal offences

27 Offences involving drink or drugs on transport systems

- (1) If a person works on a transport system to which this Chapter applies—

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- (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle, or
- (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity,

when he is unfit to carry out that work through drink or drugs, he shall be guilty of an offence.

- (2) If a person works on a transport system to which this Chapter applies—
- (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle, or
 - (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity,
- after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, he shall be guilty of an offence.

- (3) For the purposes of this section, a person works on a transport system in a maintenance capacity if his work on the system involves maintenance, repair or alteration of—
- (a) the permanent way or other means of guiding or supporting vehicles,
 - (b) signals or any other means of controlling the movement of vehicles, or
 - (c) any means of supplying electricity to vehicles or to the means of guiding or supporting vehicles,
- or involves coupling or uncoupling vehicles or checking that they are working properly before they are used on any occasion.

- (4) For the purposes of subsection (1) above, a person shall be taken to be unfit to carry out any work if his ability to carry out that work properly is for the time being impaired.

28 Offences by operators of transport systems

- (1) If a person commits an offence under section 27 above, the responsible operator shall also be guilty of an offence.
- (2) In this section “the responsible operator” means—
- (a) in a case where the transport system on which the offence under section 27 above is committed has only one operator, that operator;
 - (b) in a case where the transport system on which the offence under section 27 above is committed has more than one operator, whichever of them is responsible for the work giving rise to the offence.
- (3) No offence is committed under subsection (1) above if the responsible operator has exercised all due diligence to prevent the commission on the transport system of any offence under section 27 above.
- (4) If a person commits an offence under section 27 above in the course of his employment with a person other than the responsible operator, his employer shall (without prejudice to any liability of that operator under subsection (1) above) also be guilty of an offence.
- (5) No offence is committed under subsection (4) above if the employer has exercised all due diligence to prevent the commission on the transport system by any of his employees of any offence under section 27 above.

Police powers etc

29 Breath tests

- (1) Where a constable in uniform has reasonable cause to suspect—
 - (a) that a person working on a transport system to which this Chapter applies in any capacity mentioned in section 27(1) and (2) above has alcohol in his body, or
 - (b) that a person has been working on a transport system to which this Chapter applies in any capacity mentioned in section 27(1) and (2) above with alcohol in his body and still has alcohol in his body,he may require that person to provide a specimen of breath for a breath test.
- (2) Where an accident or dangerous incident occurs on a transport system to which this Chapter applies, a constable in uniform may require a person to provide a specimen of breath for a breath test if he has reasonable cause to suspect that—
 - (a) at the time of the accident or incident that person was working on the transport system in a capacity mentioned in section 27(1) and (2) above, and
 - (b) an act or omission of that person while he was so working may have been a cause of the accident or incident.
- (3) In subsection (2) above “dangerous incident” means an incident which in the constable’s opinion involved a danger of death or personal injury.
- (4) A person may be required under subsection (1) or subsection (2) above to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under subsection (2) above and the constable making the requirement thinks fit, at a police station specified by the constable.
- (5) A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so in pursuance of this section shall be guilty of an offence.

30 Powers of arrest and entry

- (1) A constable may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under section 27(1) above.
- (2) A constable may arrest a person without warrant if—
 - (a) as a result of a breath test under section 29 above he has reasonable cause to suspect that the proportion of alcohol in that person’s breath or blood exceeds the prescribed limit, or
 - (b) that person has failed to provide a specimen of breath for a breath test when required to do so in pursuance of section 29 above and the constable has reasonable cause to suspect that he has alcohol in his body.
- (3) For the purpose of arresting a person under subsection (1) above, a constable may enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.
- (4) A constable may, for the purpose of—
 - (a) requiring a person to provide a specimen of breath under section 29(2) above in the case of an accident which the constable has reasonable cause to suspect involved the death of, or injury to, another person, or

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(b) arresting a person in such a case under subsection (2) above, enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

31 Provision of specimens for analysis

- (1) In the course of an investigation into whether a person has committed an offence under section 27 above, a constable may require him—
 - (a) to provide two specimens of breath for analysis by means of a device of a type approved by the Secretary of State, or
 - (b) to provide a specimen of blood or urine for a laboratory test.
- (2) A requirement under this section to provide specimens of breath shall only be made at a police station.
- (3) A requirement under this section to provide a specimen of blood or urine shall only be made at a police station or at a hospital; and it shall not be made at a police station unless subsection (4) below applies.
- (4) This subsection applies if—
 - (a) the constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required,
 - (b) at the time the requirement is made, either a device (or reliable device) of the type mentioned in subsection (1)(a) above is not available at the police station or it is for any other reason not practicable to use such a device there, or
 - (c) the suspected offence is one under section 27(1) above and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug.
- (5) A person may be required to provide a specimen of blood or urine in pursuance of this section notwithstanding that he has already provided or been required to provide two specimens of breath.
- (6) If the provision of a specimen other than a specimen of breath may be required in pursuance of this section, the question whether it is to be a specimen of blood or a specimen of urine shall be decided by the constable making the requirement; but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine.
- (7) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.
- (8) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section shall be guilty of an offence.
- (9) A constable shall, on requiring a person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

32 Choice of specimens of breath

- (1) Of any two specimens of breath provided by a person in pursuance of section 31 above, the one with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.
- (2) But if the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under section 31(6) above and, if he then provides such a specimen, neither specimen of breath shall be used.
- (3) The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (2) above.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

33 Protection for hospital patients

- (1) While a person is at a hospital as a patient, he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—
 - (a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but
 - (b) if the medical practitioner objects on the ground specified in subsection (2) below, the requirement shall not be made.
- (2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or (in the case of a specimen of blood or urine) the warning required under section 31(9) above would be prejudicial to the proper care and treatment of the patient.
- (3) A person shall not be arrested under section 30(2) above while he is at a hospital as a patient.

Evidence in proceedings for offences under section 27

34 Use of specimens in proceedings

- (1) In proceedings for any offence under section 27 above—
 - (a) evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall be taken into account, and
 - (b) it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.
- (2) That assumption shall not be made if the accused proves—
 - (a) that he consumed alcohol before he provided the specimen and after he had stopped work on the occasion of the alleged offence, and

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- (b) that, had he not done so, the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit and, where the offence alleged is an offence of being unfit to carry out the work in question through drink, would not have been such as to impair his ability to carry out that work properly.
- (3) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen shall not be admissible in the proceedings on behalf of the prosecution unless—
 - (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
 - (b) the other part was supplied to the accused.

35 Documentary evidence as to specimens

- (1) In proceedings for any offence under section 27 above, evidence of the proportion of alcohol in a specimen of breath may be given by the production of a document (or documents) purporting to be—
 - (a) a statement automatically produced by the device by which the proportion of alcohol in the specimen was measured, and
 - (b) a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the specimen was provided by the accused at the date and time shown in the statement.
- (2) In such proceedings, evidence of the proportion of alcohol or a drug in a specimen of blood or urine may be given by the production of a document purporting to be a certificate signed by an authorised analyst identifying the specimen and stating the proportion of alcohol or drug found in it.
- (3) In such proceedings, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to be a certificate to that effect signed by the practitioner.
- (4) A document such as is mentioned in subsection (1) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either was handed to the accused when the document was produced or was served on him not later than seven days before the hearing.
- (5) A document such as is mentioned in subsection (2) or (3) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it was served on the accused not later than seven days before the hearing.
- (6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) shall not be admissible in evidence on behalf of the prosecution in pursuance of this section if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (7) In this section “served” means served personally or sent by registered post or recorded delivery service.

- (8) In subsection (2) above “authorised analyst” means—
- (a) any person possessing the qualifications prescribed by regulations made under section 76 of the Food Act 1984 or section 27 of the Food and Drugs (Scotland) Act 1956 as qualifying persons for appointment as public analysts under those Acts, or
 - (b) any other person authorised by the Secretary of State to make analyses for the purposes of this section.

Penalties

36 Penalties

- (1) A person guilty of any offence under this Chapter other than an offence under section 29(5) above shall be liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both.
- (2) A person guilty of an offence under section 29(5) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous and supplementary

37 Special provision for Scotland

- (1) Section 30(3) and (4) above shall not extend to Scotland, and nothing in those subsections shall affect any rule of law in Scotland concerning the right of a constable to enter any premises for any purpose.
- (2) In proceedings for any offence under section 27 above in Scotland—
 - (a) a document produced in evidence on behalf of the prosecution in pursuance of section 35 above and, where the person by whom the document was signed is called as a witness, the evidence of that person, shall be sufficient evidence of the facts stated in the document, and
 - (b) a written execution purporting to be signed by the person who handed to or served on the accused or the prosecutor a copy document or notice under section 35 above, together with, where appropriate, a post office receipt for the relevant registered or recorded delivery letter, shall be sufficient evidence of the handing or service of the copy document or notice.

38 Interpretation of Chapter I

- (1) In this Chapter—
 - “breath test” means a preliminary test for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the proportion of alcohol in a person’s breath or blood is likely to exceed the prescribed limit;
 - “drug” includes any intoxicant other than alcohol;
 - “fail” includes refuse;
 - “hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients.

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- (2) In this Chapter “the prescribed limit” means, as the case may require—
- (a) 35 microgrammes of alcohol in 100 millilitres of breath,
 - (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
 - (c) 107 milligrammes of alcohol in 100 millilitres of urine,
- or such other proportion as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of this Chapter, it is immaterial whether a person who works on a transport system does so in the course of his employment, under a contract for services, voluntarily or otherwise.
- (4) For the purposes of this Chapter, a person does not provide a specimen of breath for a breath test or for analysis unless the specimen—
- (a) is sufficient to enable the test or the analysis to be carried out, and
 - (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.
- (5) For the purposes of this Chapter, a person provides a specimen of blood if and only if he consents to its being taken by a medical practitioner and it is so taken.
- (6) The power to make regulations under subsection (2) above shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

39 Amendment of scope of offences involving drink or drugs under Road Traffic Act 1988

The following section shall be inserted in the Road Traffic Act 1988 after section 192—

“192A Tramcars and other guided vehicles: drink and drugs

- (1) Sections 4 to 11 of this Act shall not apply (to the extent that apart from this subsection they would) to vehicles on any transport system to which Chapter I of Part II of the Transport and Works Act 1992 (offences involving drink or drugs on railways, tramways and certain other guided transport systems) applies.
- (2) Subject to subsection (1) above, the Secretary of State may by regulations provide that sections 4 to 11 of this Act shall apply to vehicles on a system of guided transport specified in the regulations with such modifications as he considers necessary or expedient.
- (3) Regulations under subsection (2) above may make different provision for different cases.
- (4) In this section—

“guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way), and

“vehicle” includes mobile traction unit.”

40 Consequential amendment

In section 17 of the Railway Regulation Act 1842 (punishment of persons employed on railways guilty of misconduct) the words “who shall be found drunk while so employed upon the said railway” shall be omitted.

CHAPTER II

OTHER SAFETY PROVISIONS

General

41 Approval of works, plant and equipment

- (1) For the purpose of securing the safe operation of railways, tramways, trolley vehicle systems and prescribed systems of guided transport, the Secretary of State may make regulations requiring that his approval be obtained before—
 - (a) new works, plant or equipment are first brought into use, or
 - (b) works, plant or equipment are first brought into use after alterations have been made to them.
- (2) Regulations under this section—
 - (a) shall prescribe the cases in which approval is required and the procedure for obtaining it;
 - (b) may include provision as to the time when works, plant or equipment are to be treated as first brought into use, including provision for disregarding periods of testing and other periods of use before sufficient information is available for a decision to be made on an application for approval;
 - (c) may include provision prohibiting the giving of false information to the Secretary of State.
- (3) Regulations under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
 - (a) to dispense (conditionally or unconditionally) with compliance with regulations that would otherwise apply, or
 - (b) to require compliance with regulations that would not otherwise apply, either in the case of any particular works, plant, equipment or alterations, or in the case of works, plant, equipment or alterations of such descriptions as he may determine.
- (4) Regulations under this section may provide that any person who without reasonable cause contravenes any specified provision of the regulations, or does so in specified circumstances, shall be guilty of an offence under this section.
- (5) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—

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“equipment” includes vehicles;

“prescribed systems of guided transport” means systems using a mode of guided transport prescribed by regulations under this section.

- (8) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

42 Inspectors

- (1) The functions of inspectors appointed under section 3 of the Regulation of Railways Act 1871 shall extend not only to railways (as defined by section 2 of that Act) but also to other railways and tramways, to trolley vehicle systems and to any system using a mode of guided transport prescribed by regulations under section 41 above; and in any enactment relating to those functions—
- (a) references to railways or matters relating to railways shall be construed accordingly, and
 - (b) references to a company working a railway shall have effect as references to an operator of a railway, tramway, trolley vehicle system or system using a mode of guided transport prescribed by such regulations.
- (2) In section 3 of the Regulation of Railways Act 1871, the proviso (which prohibits an inspector from interfering in the affairs of a company) shall cease to have effect.

43 Accidents etc

- (1) The Secretary of State may make regulations requiring the reporting to him of—
- (a) accidents involving death or personal injury, and
 - (b) circumstances involving a danger of death or personal injury,
- which occur in the operation of railways, tramways, trolley vehicle systems and systems using a mode of guided transport prescribed by the regulations.
- (2) Regulations under this section shall prescribe the cases in which reports are required, the persons required to make them, the time and manner in which they are to be made, and the particulars to be included in them.
- (3) Regulations under this section may make different provision for different cases, and may include provision authorising the Secretary of State—
- (a) to dispense with compliance with any provision of the regulations that would otherwise apply, or
 - (b) to require compliance with any provision that would not otherwise apply, in any case where he considers it appropriate to do so.
- (4) A person who, without reasonable excuse, fails to make a report as required by regulations under this section shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

44 Accidents etc: consequential amendments

- (1) Section 6 of the Regulation of Railways Act 1871 (which is superseded by section 43 above) shall cease to have effect.
- (2) In section 7 of that Act (inquiries into accidents etc)—
 - (a) for the words “this Act” (in the words preceding the paragraphs) there shall be substituted the words “regulations under section 43 of the Transport and Works Act 1992”;
 - (b) after paragraph (4) there shall be added—

“In this section any reference to an accident includes a reference to circumstances involving a danger of death or personal injury.”
- (3) In section 8 of that Act (appointment of assessor to coroner) for the words “of this Act” there shall be substituted the words “of regulations under section 43 of the Transport and Works Act 1992”.

45 Directions limiting speeds and loads

- (1) The Secretary of State may give a direction under this section to any person carrying on an undertaking which includes the provision of transport services on a railway, tramway or system using any other mode of guided transport.
- (2) A direction under this section may impose—
 - (a) maximum speeds at which vehicles in use on the system may travel, and
 - (b) maximum weights that may be transmitted to the rails (or other structures which support vehicles in use on the system) by any one pair of wheels, or by such other parts of the vehicles as may be specified in the direction.
- (3) Directions under this section may make different provision for different vehicles, different parts of the system, or otherwise for different circumstances.
- (4) Before giving a direction under this section, the Secretary of State shall consult the person to whom he proposes to give it.
- (5) If a direction under this section is contravened in the course of the provision of transport services by the person to whom the direction was given, that person shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

46 Directions requiring insurance

- (1) The Secretary of State may give a direction under this section to an operator of a railway, tramway, trolley vehicle system or system using any other mode of guided transport.
- (2) A direction under this section may require the person to whom it is given to ensure that there are at all times in force such policies of insurance against liability in respect of death or personal injury as comply with the requirements of the direction.
- (3) Before giving a direction under this section, the Secretary of State shall consult the person to whom he proposes to give it.

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- (4) If a direction under this section is contravened, the person to whom the direction was given shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Rail crossings

47 Stopping up and diversion of crossings

- (1) Schedule 2 to this Act (which amends the Highways Act 1980 so as to provide for the stopping up or diversion of footpaths and bridleways crossing railways and tramways) shall have effect.
- (2) Where a public right of way over a footpath or bridleway where it crosses a railway or tramway is extinguished by an order under sections 118 to 119A of the Highways Act 1980, any obligation (however imposed) to maintain the crossing for the benefit of the public shall cease to have effect.

48 Footpaths and bridleways over railways

- (1) This section applies where—
 - (a) a public right of way over a footpath or bridleway crosses a railway or tramway otherwise than by a tunnel or bridge,
 - (b) the operator of the railway or tramway has made a closure or diversion application in respect of the crossing, and
 - (c) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.
- (2) The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates.
- (3) An order under this section may include particulars as to the tunnel or bridge which is to be provided or as to the improvements which are to be made.
- (4) The Secretary of State shall not make an order under this section after the end of the period of two years beginning with the day on which the closure or diversion application is made, and not less than two months before making an order he shall give written notice of his proposal to make the order to the operator and to each local authority in whose area the crossing (or any proposed new crossing) is situated.
- (5) A notice given under subsection (4) above must be accompanied by a draft of the proposed order under this section; and any order eventually made may include modifications of the draft.
- (6) An operator shall not be regarded as in breach of a duty imposed by an order under this section if he has used his best endeavours to comply with the order.
- (7) Where an operator is required by an order under this section to provide or improve a bridge or tunnel, but is unable to do so because he does not have the powers or rights (including rights over land) needed for the purpose, he shall not be taken to have used

his best endeavours to comply with the order unless he has used his best endeavours to obtain those powers or rights (whether by means of an order under section 1 above or otherwise).

(8) In this section—

“bridleway” has the same meaning as in the Highways Act 1980;

“closure or diversion application” means—

(a) an application made under section 6 above, or

(b) a request made in accordance with section 120(3A)(b) of the Highways Act 1980,

for an order by virtue of which a public right of way would be extinguished or diverted;

“footpath” has the same meaning as in the Highways Act 1980;

“local authority” means a county council, a district council, a London borough council, the Common Council of the City of London, a parish or community council and a parish meeting of a parish not having a separate parish council;

“operator”, in relation to a railway or tramway, means any person carrying on an undertaking which includes maintaining the permanent way.

49 Securing of gates and barriers

(1) Section 75 of the Railways Clauses Consolidation Act 1845 and section 68 of the Railways Clauses Consolidation (Scotland) Act 1845 (which make it an offence for any person to fail to fasten gates) shall be amended as follows.

(2) After the word “gate” there shall be inserted the words “or to lower any barrier”.

(3) For the words “not exceeding” onwards there shall be substituted the words “not exceeding level 3 on the standard scale.”

50 Orders under Transport Act 1968

—Section 124 of the Transport Act 1968 (which gives the Secretary of State power to impose obligations in respect of level crossings), in its application in England and Wales, shall cease to have effect.

51 Amendment of Level Crossings Act 1983.

—In section 1 of the Level Crossings Act 1983 (safety arrangements at level crossings) in subsection (11), for the definition of “operator” there shall be substituted—

“ “operator”, in relation to a crossing, means any person carrying on an undertaking which includes maintaining the permanent way;”.

Signs and barriers at private crossings

52 Placing of signs and barriers

(1) Subject to any directions under subsection (2) below, the operator of a railway or tramway which is crossed in any place by a private road or path may cause or permit crossing signs or barriers of a character—

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- (a) prescribed in regulations made by the Secretary of State, or
 - (b) otherwise authorised by him,
- to be placed on or near the road or path near the crossing.
- (2) The Secretary of State may give directions to the operator of a railway or tramway which is crossed in any place by a private road or path for the placing of crossing signs or barriers of a character specified in the directions on or near the road or path near the crossing.
- (3) For the purposes of this section—
- (a) the size and colour of a crossing sign and whether or not it is illuminated (by lighting or the use of reflectors or reflecting material), and
 - (b) the nature of the warnings, information, requirements, restrictions or prohibitions conveyed by it,
- shall be regarded as part of the sign's character.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under this section may make different provision for different cases.

53 Rights to enter land

- (1) The operator of a railway or tramway shall not enter or do anything on any land for the purpose of exercising his powers under section 52(1) above except—
- (a) with the consent of every owner of the land, or
 - (b) in accordance with an authorisation given by the Secretary of State under subsection (4) below.
- (2) Where the operator of a railway or tramway proposes to enter or do anything on any land for the purpose of exercising his powers under section 52(1) above but has not obtained the consent of every owner of the land to his proposals (after making reasonable efforts to do so), he shall serve on every owner whose consent he has not obtained a notice giving details of the proposals and stating that—
- (a) he is referring the proposals to the Secretary of State for a decision as to whether or not they should be carried out, and
 - (b) in making that decision, the Secretary of State will consider any written representations made to him by the owner within the period of forty-two days beginning with the date of the notice.
- (3) Where subsection (2) above applies, the operator shall—
- (a) submit a copy of every notice served by him under that subsection to the Secretary of State, and
 - (b) provide the Secretary of State with such further information about the proposals as he may require.
- (4) Where proposals are referred to the Secretary of State under this section, he shall after the expiry of the period of forty-two days beginning with the date of the latest notice served under subsection (2) above and after considering any representations made to him in accordance with that subsection—
- (a) authorise the operator to carry out the proposals (either without modifications or with such modifications as the Secretary of State may specify), or

Status: This is the original version (as it was originally enacted).

- (b) direct him not to carry out the proposals,
and shall serve notice of his decision on every owner served with a notice under subsection (2) above.
- (5) Any authorisation under subsection (4) above may be given subject to such conditions as the Secretary of State may specify, including conditions that compensation shall be payable by the operator.
- (6) Any dispute as to the amount of any compensation payable by virtue of subsection (5) above shall be referred to and determined by the Lands Tribunal or, in relation to land in Scotland, the Lands Tribunal for Scotland.
- (7) The operator of a railway or tramway may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of—
 - (a) complying with any directions given under section 52(2) above, or
 - (b) maintaining a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway or tramway.
- (8) The Secretary of State may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of exercising his powers under section 54(1) below.
- (9) In this section “owner”—
 - (a) in relation to any land in England and Wales, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month;
 - (b) in relation to any land in Scotland, means a person who, under the Land Clauses Acts, would be entitled to sell and convey land to the promoters of an undertaking and includes also a person who is or would be entitled to receive the rent of the land under a tenancy, other than a tenancy for a month or any period less than a month.

54 Default powers of Secretary of State

- (1) If the operator of a railway or tramway fails—
 - (a) to comply with a direction given under section 52(2) above, or
 - (b) to maintain a crossing sign or barrier lawfully placed on or near a private road or path near a place where it crosses the railway or tramway,the Secretary of State may himself carry out the work required by the direction or necessary to maintain the crossing sign or barrier.
- (2) Any expenses incurred by the Secretary of State in doing so shall be recoverable by him from the operator.
- (3) A direction given under section 52(2) above—
 - (a) if relating to a private road or path in England and Wales, shall be enforceable on the application of the Secretary of State by an order of mandamus;
 - (b) if relating to a private road or path in Scotland, shall be enforceable by order of the Court of Session on an application by the Lord Advocate under section 45 of the Court of Session Act 1988.

55 Offence of failing to comply with sign

- (1) A person who fails to comply with any requirement, restriction or prohibition conveyed by a crossing sign lawfully placed on or near a private road or path near a place where it crosses a railway or tramway shall be guilty of an offence.
- (2) In any proceedings for an offence under this section, a crossing sign on or near a private road or path near a place where it crosses a railway or tramway shall be taken to have been lawfully placed there unless the contrary is proved.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

56 Interpretation of sections 52 to 55

- (1) In sections 52 to 55 above (and this section)—
 - “barrier” includes gate;
 - “cross” means cross otherwise than by tunnel or bridge;
 - “crossing sign”, in relation to a private road or path and any place where it crosses a railway or tramway, means—
 - (a) any object or device (whether fixed or portable), or
 - (b) any line or mark on the road or path,
 for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing;
 - “fail” includes refuse;
 - “lawfully placed” means placed in accordance with sections 52 to 54 above;
 - “maintain” includes repair and replace;
 - “place” includes erect and (in relation to a sign) display;
 - “private road or path” means any length of road or path to which the public does not have access.
- (2) In the case of a railway or tramway which has more than one operator, the powers conferred by sections 52 to 54 above shall only be exercisable by or in relation to the operator carrying on the undertaking which includes maintaining the permanent way.

CHAPTER III**SUPPLEMENTARY****57 Duty to consult**

It shall be the duty of the Secretary of State, before he makes regulations under section 32, 38(2), 41 or 43 above, to consult such organisations as he considers to be representative of persons who will be affected by the regulations.

58 Prosecutions

No proceedings shall be instituted in England and Wales in respect of an offence under this Part except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

59 Offences by bodies corporate etc

- (1) Where an offence under this Part committed by a body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, he as well as the body corporate shall be guilty of the offence.
- (2) In subsection (1) above “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) Where, in Scotland, an offence under this Part committed by a partnership or by an unincorporated association other than a partnership is committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of the offence.