



# Railways Act 1993

## 1993 CHAPTER 43

### PART I

#### THE PROVISION OF RAILWAY SERVICES

##### *Access agreements*

#### **17 Access agreements: directions requiring facility owners to enter into contracts for the use of their railway facilities**

- (1) The Regulator may, on the application of any person, give directions to a facility owner requiring him to enter into an access contract with the applicant for the purpose specified in subsection (2) below; but no such directions shall be given if and to the extent that—
  - (a) the facility owner's railway facility is, by virtue of section 20 below, an exempt facility;
  - (b) performance of the access contract, if entered into, would necessarily involve the facility owner in being in breach of an access agreement or an international railway access contract; or
  - (c) as a result of an obligation or duty owed by the facility owner which arose before the coming into force of this section, the consent of some other person is required by the facility owner before he may enter into the access contract.
- (2) The purpose for which directions may be given is that of enabling the beneficiary to obtain (whether for himself alone or for himself and, so far as may be applicable, associates of his)—
  - (a) from a facility owner whose railway facility is track, permission to use that track for the purpose of the operation of trains on that track by the beneficiary;
  - (b) from a facility owner whose railway facility is a station, permission to use that station for or in connection with the operation of trains by the beneficiary;
  - (c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services for or in connection with the operation of trains by

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the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another;

- (d) from any facility owner, permission to use the facility owner’s railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock in connection with the operation of trains on any track by the beneficiary; or
- (e) from any facility owner, permission to use the facility owner’s railway facility for or in connection with the operation of a network, station or light maintenance depot by the beneficiary;

but this subsection is subject to the limitations imposed by subsection (3) below.

(3) In subsection (2) above—

- (a) paragraph (a) does not extend to obtaining permission to use track for the purpose of providing network services on that track;
- (b) paragraph (b) does not extend to obtaining permission to use a station for the purpose of operating that station;
- (c) paragraph (c) does not extend to obtaining permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance;
- (d) if and to the extent that the railway facility mentioned in paragraph (e) is track, that paragraph does not extend to obtaining permission to use that track for the purpose—

- (i) of providing network services on that track, or
- (ii) of operating any network in which that track is comprised,

except where the purpose for which directions are sought is to enable the beneficiary to operate on behalf of the Franchising Director a network in which the track in question is comprised;

- (e) if and to the extent that the railway facility mentioned in that paragraph is a station, that paragraph does not extend to obtaining permission to use that station for the purpose—
- (i) of providing station services at that station, or
- (ii) of operating that station,

except where the purpose for which directions are sought is to enable the beneficiary to operate the station on behalf of the Franchising Director;

- (f) if and to the extent that the railway facility mentioned in that paragraph is a light maintenance depot, that paragraph does not extend to obtaining permission to use that light maintenance depot for the purpose—
- (i) of carrying out light maintenance at that light maintenance depot, or
- (ii) of operating that light maintenance depot,

except where the purpose for which directions are sought is to enable the beneficiary to operate the light maintenance depot on behalf of the Franchising Director.

(4) Any reference in this section to a person operating a network, station or light maintenance depot “on behalf of the Franchising Director” is a reference to his operating the network, station or light maintenance depot in pursuance of any agreement or other arrangements made by the Franchising Director for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of this Part to secure the operation of that network, station or light maintenance depot.

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(5) Nothing in this section authorises the Regulator to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility.

(6) In this Part—

“access contract” means—

- (a) a contract under which—
- (b) a person (whether or not the applicant), and
- (ii) so far as may be appropriate, any associate of that person,

obtains permission from a facility owner to use the facility owner’s railway facility; or

- (b) a contract conferring an option, whether exercisable by the applicant or some other person, to require a facility owner to secure that—
- (i) a person (whether or not the applicant or that other), and
- (ii) so far as may be appropriate, any associate of that person,

obtains permission from the facility owner to use his railway facility;

and any reference to an “access option” is a reference to an option falling within paragraph (b) above;

“facility owner” means any person—

- (a) who has an estate or interest in, or right over, a railway facility; and
- (b) whose permission to use that railway facility is needed by another before that other may use it;

and any reference to a facility owner’s railway facility is a reference to the railway facility by reference to which he is a facility owner.

(7) In this section—

“the applicant” means the person making the application for directions;

“associate”, in relation to any person, includes—

- (a) any servant, agent or independent contractor of his;
- (b) any passenger of his;
- (c) any person engaged in the provision of goods or services to or for him; and
- (d) any other person who deals or has business with him;

“the beneficiary” means the person mentioned in paragraph (a)(i) or, as the case may be, paragraph (b)(i) of the definition of “access contract” in subsection (6) above, according to the description of access contract in question;

“directions” means directions under this section;

“the Directive” means the Directive [91/440/EEC](#) of the Council of the European Communities dated 29th July 1991 on the development of the Community’s railways;

“implementing regulation” means a provision contained in subordinate legislation made for the purpose of implementing the Directive;

“international railway access contract” means an access contract entered into as a result of—

- (a) an application made under an implementing regulation by an international grouping to an infrastructure manager for access and transit rights, or for transit rights, for the provision of international services between the member States where the undertakings constituting the international grouping are established; or

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(b) an application made under an implementing regulation by a railway undertaking established, or to be established, in a member State other than the United Kingdom to an infrastructure manager for the grant of access for the purpose of the operation of international combined transport goods services;

and expressions used in paragraph (a) or (b) above and in the Directive have the same meaning in that paragraph as they have in the Directive;

“lease” includes an underlease or sublease and an agreement for a lease, underlease or sublease.

(8) Any reference in this section to obtaining permission to use a railway facility includes—

(a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that railway facility, whether the facility owner in question is to provide those services himself or to secure their provision by another; and

(b) a reference to obtaining permission—

(i) to enter upon the facility land, with or without vehicles,

(ii) to bring things on to that land and keep them there,

(iii) to carry out works on that land, and

(iv) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land,

“facility land” meaning in this paragraph the land which constitutes the railway facility in question;

and, in subsection (2)(c) above, the reference to obtaining permission to use a light maintenance depot includes a reference to obtaining power to obtain light maintenance services at that light maintenance depot, whether the facility owner is to provide those services himself or to secure their provision by another.

(9) Any reference in this section to a railway facility includes a reference to a part of a railway facility.

(10) Schedule 4 to this Act shall have effect with respect to applications for directions.

(11) Any sums required for the making by the Franchising Director of payments in respect of an access contract entered into pursuant to directions under this section shall, if the access contract is one—

(a) in relation to which the Franchising Director is the person who made the application under this section, or

(b) under which an access option is exercisable by the Franchising Director, be paid by the Secretary of State out of money provided by Parliament.

## **18 Access agreements: contracts requiring the approval of the Regulator**

(1) A facility owner shall not enter into an access contract to which this section applies unless—

(a) he does so pursuant to directions under section 17 above; or

(b) the Regulator has approved the terms of the access contract and the facility owner enters into the contract pursuant to directions under this section;

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and any access contract to which this section applies which is entered into otherwise than in compliance with paragraph (a) or (b) above shall be void.

(2) The access contracts to which this section applies are those under which the beneficiary obtains, or, in the case of an access contract conferring an access option, may obtain, (whether for himself alone or for himself and associates of his)—

- (a) from a facility owner whose railway facility is track, permission to use that track for the purpose of the operation of trains on that track by the beneficiary;
- (b) from a facility owner whose railway facility is a station, permission to use that station, for or in connection with the operation of trains by the beneficiary;
- (c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another;
- (d) from any facility owner, permission to use the facility owner's railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock in connection with the operation of trains on any track by the beneficiary; or
- (e) from any facility owner, permission to use the facility owner's railway facility for or in connection with the operation of a network, station or light maintenance depot by the beneficiary;

but this subsection is subject to subsections (3) and (4) below.

(3) This section does not apply to an access contract—

- (a) if and to the extent that the railway facility to which the access contract relates is, by virtue of section 20 below, an exempt facility; or
- (b) if and to the extent that the access contract is an international railway access contract.

(4) In subsection (2) above—

- (a) paragraph (a) does not extend to permission to use track for the purpose of providing network services on that track;
- (b) paragraph (b) does not extend to permission to use a station for the purpose of operating that station;
- (c) paragraph (c) does not extend to permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance;
- (d) if and to the extent that the railway facility mentioned in paragraph (e) is track, that paragraph does not extend to obtaining permission to use that track for the purpose—

- (i) of providing network services on that track, or
- (ii) of operating any network in which that track is comprised,

unless the purpose of entering into the access contract is to enable the beneficiary to operate on behalf of the Franchising Director a network in which the track in question is comprised;

- (e) if and to the extent that the railway facility mentioned in that paragraph is a station, that paragraph does not extend to obtaining permission to use that station for the purpose—
  - (i) of providing station services at that station, or
  - (ii) of operating that station,

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unless the purpose of entering into the access contract is to enable the beneficiary to operate the station on behalf of the Franchising Director;

- (f) if and to the extent that the railway facility mentioned in that paragraph is a light maintenance depot, that paragraph does not extend to obtaining permission to use that light maintenance depot for the purpose—
- (i) of carrying out light maintenance at that light maintenance depot, or
  - (ii) of operating that light maintenance depot,

unless the purpose of entering into the access contract is to enable the beneficiary to operate the light maintenance depot on behalf of the Franchising Director.

(5) In any case where—

- (a) a facility owner and another person (the “other party”) have agreed the terms on which they propose to enter into an access contract to which this section applies, but
- (b) the circumstances are such that, by virtue of subsection (1)(b) above, those terms must be approved, and directions must be given, by the Regulator before the facility owner may enter into the proposed access contract,

it shall be for the facility owner to submit the proposed access contract to the Regulator for approval of its terms.

(6) If, on the submission of a proposed access contract pursuant to subsection (5) above, the Regulator approves its terms, he shall issue directions to the facility owner—

- (a) requiring him to enter into the proposed access contract within such period as may be specified for the purpose in the directions; but
- (b) releasing him from his duty to do so if the other party fails to enter into the proposed access contract within such period as may be specified for the purpose in the directions;

and the Regulator shall send a copy of the directions to the other party.

(7) If, on the submission of a proposed access contract pursuant to subsection (5) above, the Regulator does not consider it appropriate to approve its terms without modification (or to reject it), he may, after consultation with the facility owner and the other party, issue directions to the facility owner—

- (a) approving the terms of the proposed access contract, but subject to such modifications as may be specified in the directions; and
- (b) requiring the facility owner to enter into the proposed access contract on those terms, as so modified; but
- (c) releasing him from his duty to do so if either—
  - (i) the facility owner gives the Regulator notice of objection before the expiration of the period of fourteen days beginning with the day after that on which the directions are issued; or
  - (ii) the other party fails to enter into the proposed access contract, on the terms as modified under this subsection, before the date specified for the purpose in the directions;

and the Regulator shall send a copy of the directions to the other party.

(8) In this section, “associate”, “the beneficiary”, “international railway access contract” and “lease” have the same meaning as they have in section 17 above.

(9) The following provisions of section 17 above, that is to say—

- (a) subsection (4),
- (b) subsection (8)(a) and (b), and
- (c) subsection (9),

apply for the purposes of this section as they apply for the purposes of that section; and the words following paragraph (b) of subsection (8) of that section apply in relation to subsection (2)(c) of this section as they apply in relation to subsection (2)(c) of that section.

- (10) This section shall not prevent a facility owner from granting a lease of any land which consists of or includes the whole or any part of his railway facility.
- (11) Any sums required for the making by the Franchising Director of payments in respect of an access contract entered into pursuant to directions under this section shall, if the access contract is one—
  - (a) to which the Franchising Director is a party, but in relation to which he is not the facility owner, or
  - (b) under which the Franchising Director is the person by whom an access option is exercisable,

be paid by the Secretary of State out of money provided by Parliament.

## **19 Access agreements: contracts for the use, on behalf of the Franchising Director, of installations comprised in a network**

- (1) The Regulator may, on the application of any person, give directions to an installation owner requiring him to enter into an installation access contract with the applicant for the purpose of enabling the beneficiary to obtain (whether for himself alone or for himself and, so far as may be applicable, associates of his) permission to use the installation owner's network installation for the purpose of operating, on behalf of the Franchising Director, the network in which the network installation is comprised.
- (2) Directions shall not be given under subsection (1) above in the case of any network installation if and to the extent that, as a result of an obligation or duty owed by the installation owner which arose before the coming into force of this section, the consent of some other person is required by the installation owner before he may enter into the installation access contract.
- (3) An installation owner shall not enter into an installation access contract to which this subsection applies unless—
  - (a) he does so pursuant to directions under subsection (1) above; or
  - (b) the Regulator has approved the terms of the installation access contract and the installation owner enters into the contract pursuant to directions given by virtue of subsection (5) below;and any installation access contract to which this subsection applies which is entered into otherwise than in compliance with paragraph (a) or (b) above shall be void.
- (4) The installation access contracts to which subsection (3) above applies are those under which the beneficiary obtains (whether for himself alone or for himself and associates of his) from an installation owner permission to use the installation owner's network installation for the purpose of operating, on behalf of the Franchising Director, the network in which the network installation is comprised.
- (5) Subsections (5) to (7) of section 18 above shall apply in relation to installation access contracts to which subsection (3) of this section applies as they apply in relation to

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access contracts to which that section applies, but with the following modifications, that is to say—

- (a) for any reference to a facility owner there shall be substituted a reference to an installation owner;
- (b) for any reference to an access contract to which that section applies there shall be substituted a reference to an installation access contract to which subsection (3) above applies;
- (c) for the reference to subsection (1)(b) of that section there shall be substituted a reference to subsection (3)(b) of this section.

(6) Nothing in this section—

- (a) authorises the Regulator to give directions to an installation owner requiring him to grant a lease of the whole or any part of his network installation; or
- (b) prevents an installation owner from granting a lease of any land which consists of or includes the whole or any part of his network installation.

(7) Any reference in this section to a person operating a network “on behalf of the Franchising Director” is a reference to his operating the network in pursuance of any agreement or other arrangements made by the Franchising Director for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of this Part to secure the operation of that network.

(8) Any reference in this section to obtaining permission to use a network installation includes—

- (a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that network installation, whether the installation owner in question is to provide those services himself or to secure their provision by another; and
- (b) a reference to obtaining permission—
  - (i) to enter upon the installation land, with or without vehicles,
  - (ii) to bring things on to that land and keep them there,
  - (iii) to carry out works on that land, and
  - (iv) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land;

and in paragraph (b) above “installation land” means the land which constitutes the network installation in question.

(9) In this Part—

“installation access contract” means a contract under which—

- (a) a person (whether or not the applicant), and
- (b) so far as may be appropriate, any associate of that person,

obtains permission from an installation owner to use the installation owner’s network installation;

“installation owner” means any person—

- (a) who has an estate or interest in, or right over, a network installation; and
- (b) whose permission to use that network installation is needed by another before that other may use it;

and any reference to an installation owner’s network installation is a reference to the network installation by reference to which he is an installation owner.



(10) In this section—

“ancillary service” means any service which is necessary or expedient for giving full effect to any permission or right which a person may have to use a network installation;

“the applicant” means the person making the application for directions under subsection (1) above;

“associate” has the meaning given by section 17(7) above;

“the beneficiary” means the person mentioned in paragraph (a) of the definition of “installation access contract” in subsection (9) above;

“lease” includes an underlease or sublease and an agreement for a lease, underlease or sublease;

“network installation” means any installation (other than track) which is comprised in a network.

(11) Any reference in this section to a network installation includes a reference to a part of a network installation.

(12) Schedule 4 to this Act shall have effect with respect to applications for directions under subsection (1) above as it has effect with respect to applications for directions under section 17 above, but with the following modifications, that is to say—

- (a) for any reference to an access contract, there shall be substituted a reference to an installation access contract;
- (b) any reference to an application for directions under section 17 above shall be taken as a reference to an application for directions under subsection (1) above;
- (c) for any reference to the facility owner, there shall be substituted a reference to the installation owner mentioned in subsection (1) above;
- (d) for any reference to section 17 above (but not to any specific provision of that section) there shall be substituted a reference to this section.

(13) There shall be paid by the Secretary of State out of money provided by Parliament any sums required for the making by the Franchising Director of payments in respect of—

- (a) an installation access contract—
  - (i) which is entered into pursuant to directions under subsection (1) above; and
  - (ii) in relation to which the Franchising Director is the person who made the application under this section; and
- (b) an installation access contract—
  - (i) which is entered into pursuant to directions given by virtue of subsection (5) above; and
  - (ii) to which the Franchising Director is a party, but in relation to which he is not the installation owner.

## **20 Exemption of railway facilities from sections 17 and 18**

(1) The Secretary of State may, after consultation with the Regulator, by order grant exemption from sections 17 and 18 above in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.

(2) A facility exemption under subsection (1) above may be granted—

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- (a) to persons of a particular class or description or to a particular person; and
- (b) in respect of railway facilities of a particular class or description or a particular railway facility, or in respect of part only of any such railway facilities or facility;

and a facility exemption granted to persons of a particular class or description shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class or description.

- (3) If a facility owner makes an application under this subsection to the Regulator for the grant of an exemption from sections 17 and 18 above in respect of the whole or any part of his railway facility, the Regulator, after consultation with the Secretary of State—
- (a) may either grant or refuse the exemption, whether wholly or to such extent as he may specify in the exemption; and
  - (b) if and to the extent that he grants it, may do so subject to compliance with such conditions (if any) as he may so specify.

- (4) Before granting a facility exemption under subsection (3) above, the Regulator shall give notice—

- (a) stating that he proposes to grant the facility exemption,
- (b) stating the reasons why he proposes to grant the facility exemption, and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed facility exemption may be made,

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

- (5) A notice under subsection (4) above shall be given by publishing the notice in such manner as the Regulator considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the facility exemption.

- (6) If any condition (the “broken condition”) of a facility exemption is not complied with—

- (a) the Secretary of State, in the case of a facility exemption under subsection (1) above, or
- (b) the Regulator, in the case of a facility exemption under subsection (3) above,

may give to any relevant person a direction declaring that the facility exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

- (7) For the purposes of subsection (6) above—

“condition”, in relation to a facility exemption, means any condition subject to compliance with which the facility exemption was granted;

“relevant person”, in the case of any facility exemption, means a person who has the benefit of the facility exemption and who—

- (a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or
- (b) is the facility owner in the case of the railway facility in relation to which the broken condition is not complied with.

- (8) Subject to subsection (6) above, a facility exemption, unless previously revoked in accordance with any term contained in the facility exemption, shall continue in

force for such period as may be specified in, or determined by or under, the facility exemption.

- (9) Subsection (1) above applies in relation to the grant of any facility exemption which is to become effective on the day on which sections 17 and 18 above come into force; and subsection (3) above applies in relation to the grant of any facility exemption which is not to become effective until after that day.
- (10) Any application for a facility exemption under subsection (3) above must be made in writing; and where any such application is made, the Regulator may require the applicant to furnish him with such information as the Regulator may consider necessary to enable him to decide whether to grant or refuse the facility exemption.
- (11) Facility exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.
- (12) A facility exemption may be granted in respect of the whole or any part of a railway facility notwithstanding that the railway facility or the part is one which—
  - (a) is proposed to be constructed; or
  - (b) is in the course of construction;and any reference in this section to a railway facility or part of a railway facility shall be construed accordingly.
- (13) In this Part “facility exemption” means an exemption from sections 17 and 18 above granted under any provision of this section in respect of the whole or any part of a railway facility; and a railway facility is an “exempt facility” if and to the extent that it is the subject of such an exemption.

## **21 Model clauses for access contracts**

- (1) The Regulator may prepare and publish model clauses for inclusion in access contracts.
- (2) Different model clauses may be prepared and published in relation to different classes or descriptions of railway facility.
- (3) The Regulator may from time to time revise any model clauses published under this section and may publish those clauses as so revised.
- (4) In preparing or revising any model clauses under this section, the Regulator may consult such persons as he thinks fit.
- (5) The Regulator shall encourage, and may require, the use of any model clauses of his in access contracts wherever he considers it appropriate.

## **22 Amendment of access agreements**

- (1) Any amendment, or purported amendment, of an access agreement shall be void unless the amendment has been approved by the Regulator.
- (2) The Regulator may, for the purposes of subsection (1) above, give the parties to any particular access agreement his general approval to the making to that access agreement of amendments of a description specified in the approval; and any approval so given shall not be revoked.

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- (3) The Regulator may, for the purposes of subsection (1) above, give his general approval to the making to access agreements, or to access agreements of a particular class or description, of amendments of a description specified in the approval.
- (4) Where the Regulator gives or revokes a general approval under subsection (3) above, he shall publish the approval or revocation (as the case may be) in such manner as he considers appropriate.
- (5) The revocation of a general approval given under subsection (3) above shall not affect the continuing validity of any amendment made in accordance with, and before the revocation of, that approval.
- (6) The Regulator shall not have power to direct or otherwise require amendments to be made to an access agreement.