



# Railways Act 1993

## 1993 CHAPTER 43

### PART I

#### THE PROVISION OF RAILWAY SERVICES

##### *Modification of licences*

#### **12 Modification by agreement**

- (1) Subject to the following provisions of this section, the Regulator may modify the conditions of a licence if the holder of the licence consents to the modifications.
- (2) Before making modifications under this section, the Regulator shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect,
  - (b) stating the reasons why he proposes to make the modifications, and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
  - (a) by publishing the notice in such manner as the Regulator considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the holder of the licence.
- (4) As soon as practicable after making any modifications under this section, the Regulator shall send a copy of those modifications to the Health and Safety Executive.

### **13 Modification references to the Monopolies Commission**

- (1) The Regulator may make to the Monopolies and Mergers Commission (in this Act referred to as the “Monopolies Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
  - (a) whether any matters which—
    - (i) relate to the provision of any railway services by means of a railway asset, or railway assets of a class or description, whose operator acts as such by virtue of a licence, and
    - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Regulator may, at any time, by notice given to the Monopolies Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Regulator may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Regulator—
  - (a) shall serve a copy of the reference or variation on the holder of the licence; and
  - (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) The Regulator shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.
- (6) It shall be the duty of the Regulator, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—
  - (a) any information in his possession which relates to matters falling within the scope of the investigation and—
    - (i) is requested by the Commission for that purpose; or
    - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

- (7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Regulator by section 4 above.
- (8) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 (modifications of provisions about performance of such functions) of the Competition Act 1980 (in this Part referred to as “the 1980 Act”) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in the said section 70, references to the Secretary of State were references to the Regulator and the reference to three months were a reference to six months;
  - (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to subsection (2) above; and
  - (e) paragraph 16(2) of that Schedule were omitted.
- (9) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

#### **14 Reports on modification references**

- (1) In making a report on a reference under section 13 above, the Monopolies Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under section 13 above, the Monopolies Commission conclude that the holder of the licence is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.

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

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- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 13 above as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under section 13 above shall be made to the Regulator.
- (5) Subject to subsection (6) below, the Regulator—
  - (a) shall, on receiving such a report, send a copy of it to the holder of the licence to which the report relates and to the Secretary of State; and
  - (b) shall, not less than 14 days after that copy is received by the Secretary of State, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in paragraph (b) of subsection (5) above, direct the Regulator to exclude that matter from every copy of the report to be published by virtue of that paragraph.
- (7) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

## **15 Modification following report**

- (1) Where a report of the Monopolies Commission on a reference under section 13 above—
  - (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,
  - (b) specifies effects adverse to the public interest which those matters have or may be expected to have,
  - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence, and
  - (d) specifies modifications by which those effects could be remedied or prevented,

the Regulator shall, subject to the following provisions of this section, make such modifications of the conditions of that licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Regulator shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Regulator shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect,
  - (b) stating the reasons why he proposes to make the modifications, and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—

- (a) by publishing the notice in such manner as the Regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the holder of the licence.
- (5) As soon as practicable after making any modifications under this section, the Regulator shall send a copy of those modifications to the Health and Safety Executive.
- (6) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

## **16 Modification by order under other enactments**

- (1) Where, in the circumstances mentioned in subsection (2) below, the Secretary of State by order exercises any of the powers specified in—
  - (a) Parts I and II of Schedule 8 to the 1973 Act, or
  - (b) section 10(2)(a) of the 1980 Act,the order may also provide for the modification of the conditions of a licence to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.
- (2) Subsection (1) above shall have effect where—
  - (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and either—
    - (i) the monopoly situation exists in relation to the supply of any railway service; or
    - (ii) the monopoly situation exists in relation to the supply of transport services and at least one of the persons in whose favour the monopoly situation exists has been engaged in the supply of railway services;
  - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and at least one of the two or more enterprises which ceased, or (in the application of that provision as it has effect by virtue of section 75(4)(e) of that Act) which would cease, to be distinct enterprises was or, as the case may be, is engaged in the supply of railway services; or
  - (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the supply of any railway service.
- (3) As soon as practicable after making any modifications under this section, the Secretary of State shall send a copy of those modifications to the Regulator and to the Health and Safety Executive.
- (4) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.
- (5) In this section expressions which are also used in the 1973 Act or the 1980 Act have the same meaning as in that Act.