



# Railways Act 1993

## 1993 CHAPTER 43

### PART I

#### THE PROVISION OF RAILWAY SERVICES

##### *Railway administration orders, winding up and insolvency*

#### **59 Meaning and effect of railway administration order**

- (1) A “railway administration order” is an order of the court made in accordance with section 60, 61 or 62 below in relation to a protected railway company and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the court,—
  - (a) for the achievement of the purposes of such an order; and
  - (b) in a manner which protects the respective interests of the members and creditors of the company.
- (2) The purposes of a railway administration order made in relation to any company shall be—
  - (a) the transfer to another company, or (as respects different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to ensure that the relevant activities may be properly carried on; and
  - (b) the carrying on of those relevant activities pending the making of the transfer.
- (3) Schedule 6 to this Act shall have effect for applying provisions of the Insolvency Act 1986 where a railway administration order is made.
- (4) Schedule 7 to this Act shall have effect for enabling provision to be made with respect to cases in which, in pursuance of a railway administration order, another company is to carry on all or any of the relevant activities of a protected railway company in place of that company.

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- (5) Without prejudice to paragraph 20 of Schedule 6 to this Act, the power conferred by section 411 of the Insolvency Act 1986 to make rules shall apply for the purpose of giving effect to the railway administration order provisions of this Act as it applies for the purpose of giving effect to Parts I to VII of that Act, but taking any reference in that section to those Parts as a reference to those provisions.
- (6) For the purposes of this Part—
- (a) “protected railway company” means a company which is both a private sector operator and the holder of—
    - (i) a passenger licence; or
    - (ii) a network licence, a station licence or a light maintenance depot licence; and
  - (b) the “relevant activities”, in relation to a protected railway company, are—
    - (i) in the case of a company which is the holder of a passenger licence, the carriage of passengers by railway; or
    - (ii) in the case of a company which is the holder of a network licence, a station licence or a light maintenance depot licence, the management of a network, a station or a light maintenance depot, according to the description of licence in question.
- (7) In this section—
- “business” and “property” have the same meaning as they have in the Insolvency Act 1986;
- “the court”, in the case of any protected railway company, means the court having jurisdiction to wind up the company;
- “the railway administration order provisions of this Act” means this section, sections 60 to 65 below and Schedules 6 and 7 to this Act.

## **60 Railway administration orders made on special petitions**

- (1) If, on an application made to the court by petition presented—
- (a) by the Secretary of State, or
  - (b) if the petition relates to a protected railway company which is the holder of a passenger licence, by the Franchising Director with the consent of the Secretary of State,
- the court is satisfied that either or both of the grounds specified in subsection (2) below is satisfied in relation to that protected railway company, the court may make a railway administration order in relation to that company.
- (2) The grounds mentioned in subsection (1) above are, in relation to any company,—
- (a) that the company is or is likely to be unable to pay its debts;
  - (b) that, in a case in which the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the company under section 124A of the 1986 Act (petition by the Secretary of State following inspectors' report etc), it would be just and equitable, as mentioned in that section, for the company to be wound up.
- (3) Notice of any petition under this section for a railway administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the 1986 Act; and no such petition shall be withdrawn except with the leave of the court.

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- (4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a railway administration order in relation to any company as they apply on the hearing of a petition for an administration order.
- (5) Subsections (1), (2), (4) and (5) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a railway administration order in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to a railway administration order;
  - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
  - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 55 above.
- (6) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
  - (b) it is an unregistered company, within the meaning of Part V of the 1986 Act, which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).
- (7) In this section—
- “the 1986 Act” means the Insolvency Act 1986;
  - “the court” has the same meaning as in section 59 above.

## **61 Restriction on making winding-up order in respect of protected railway company**

- (1) Where a petition for the winding up of a protected railway company is presented by a person other than the Secretary of State, the court shall not make a winding-up order in relation to that company on that petition unless—
- (a) notice of the petition has been served on—
    - (i) the Secretary of State; and
    - (ii) the Franchising Director, if the protected railway company is the holder of a passenger licence; and
  - (b) a period of at least fourteen days has elapsed since the service of that notice.
- (2) Where a petition for the winding up of a protected railway company has been presented—
- (a) the Secretary of State, or
  - (b) if the company is the holder of a passenger licence, the Franchising Director with the consent of the Secretary of State,
- may, at any time before a winding-up order is made on the petition, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of a winding-up order.

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(3) Where, on a petition for the winding up of a protected railway company, the court makes, or proposes to make, a railway administration order by virtue of subsection (2) above, subsections (4) and (5) of section 9 of the Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that petition as they apply on the hearing of a petition for an administration order.

(4) In this section “the court” has the same meaning as in section 59 above.

## **62 Restrictions on voluntary winding up and insolvency proceedings in the case of protected railway companies**

(1) No resolution for voluntary winding up shall be passed by a protected railway company without leave of the court granted on an application made for the purpose by the company.

(2) No such leave shall be granted unless—

(a) notice of the application has been served on—

(i) the Secretary of State; and

(ii) the Franchising Director, if the protected railway company is the holder of a passenger licence; and

(b) a period of at least fourteen days has elapsed since the service of that notice.

(3) Where an application for leave under subsection (1) above has been made by a protected railway company—

(a) the Secretary of State, or

(b) if the company is the holder of a passenger licence, the Franchising Director with the consent of the Secretary of State,

may, at any time before leave has been granted under subsection (1) above, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of granting leave under subsection (1) above.

(4) Where, on an application for leave under subsection (1) above, the court makes, or proposes to make, a railway administration order by virtue of subsection (3) above, subsections (4) and (5) of section 9 of the Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that application as they apply on the hearing of a petition for an administration order.

(5) No administration order under Part II of the Insolvency Act 1986 shall be made in relation to a protected railway company unless—

(a) notice of the application for the order has been served on—

(i) the Secretary of State; and

(ii) the Franchising Director, if the protected railway company is the holder of a passenger licence; and

(b) a period of at least fourteen days has elapsed since the service of that notice.

(6) Where an application for an administration order under Part II of the Insolvency Act 1986 has been made in the case of a protected railway company—

(a) the Secretary of State, or

(b) if the company is the holder of a passenger licence, the Franchising Director with the consent of the Secretary of State,

may, at any time before such an order has been made on that application, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of an administration order under Part II of the Insolvency Act 1986.

- (7) No step shall be taken by any person to enforce any security over a protected railway company's property, except where that person has served fourteen days' notice of his intention to take that step on—
- (a) the Secretary of State; and
  - (b) the Franchising Director, if the company is the holder of a passenger licence.
- (8) In this section—
- “the court” has the same meaning as in section 59 above;
  - “resolution for voluntary winding up” has the same meaning as in the Insolvency Act 1986;
  - “security” and “property” have the same meaning as in the Insolvency Act 1986.

### **63 Government financial assistance where railway administration orders made**

- (1) Where a railway administration order is for the time being in force in relation to a company, the Secretary of State may, with the consent of the Treasury—
- (a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;
  - (b) agree to indemnify the person appointed to achieve the purposes of the order in respect of liabilities incurred and loss or damage sustained by that person in connection with the carrying out of his functions under the order.
- (2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company in relation to which a railway administration order is in force at the time when the guarantee is given.
- (3) Without prejudice to any provision applied in relation to the company by Schedule 6 to this Act—
- (a) the terms and conditions on which a grant is made to any company under this section may require the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and
  - (b) any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest on the loans shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.
- (4) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.
- (5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

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#### **64 Guarantees under section 63**

- (1) This section applies in relation to any guarantee given by the Secretary of State under section 63 above.
- (2) Immediately after a guarantee to which this section applies is given, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.
- (3) Where any sum is paid out for fulfilling a guarantee to which this section applies, the Secretary of State shall, as soon as possible after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is finally discharged), lay before each House of Parliament a statement relating to that sum.
- (4) Any sums required by the Secretary of State for fulfilling a guarantee to which this section applies shall be paid out of money provided by Parliament.
- (5) Without prejudice to any provision applied in relation to the relevant company by Schedule 6 to this Act, if any sums are paid out in fulfilment of a guarantee to which this section applies, the relevant company shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—
  - (a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and
  - (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out;and the consent of the Treasury shall be required for the giving of a direction under this subsection.
- (6) Any sums received by the Secretary of State under subsection (5) above shall be paid into the Consolidated Fund.
- (7) In subsection (5) above “the relevant company” in relation to a guarantee, means the company which borrowed the sums in respect of which the guarantee was given.

#### **65 Meaning of “company” and application of provisions to unregistered, foreign and other companies**

- (1) In the railway administration order provisions of this Act—

“company” means—

  - (a) any company formed and registered under the Companies Act 1985 or any existing company within the meaning given in section 735(1) of that Act; and
  - (b) any unregistered company; and

“unregistered company” has the meaning given in Part V of the 1986 Act.
- (2) In the application of section 59(1) above in a case where the protected railway company there mentioned is a foreign company, the reference to the affairs, business and property of the company shall be taken as a reference to the affairs and business of the company, so far as carried on in Great Britain, and the property of the company within Great Britain.
- (3) In the application of section 9(5) of the 1986 Act by virtue of subsection (4) of section 60 above or subsection (3) of section 61 above where the petition mentioned

in the subsection in question relates to a company which is a foreign company, the reference to restricting the exercise of any powers of the directors or of the company shall be taken as a reference to restricting—

- (a) the exercise within Great Britain of the powers of the directors or of the company; or
  - (b) any exercise of those powers so far as relating to the affairs, business or property of the company in Great Britain.
- (4) In the application of provisions in section 10 of the 1986 Act by virtue of subsection (5) of section 60 above where the company mentioned in that subsection is a foreign company—
- (a) paragraph (a) of subsection (1) shall be omitted;
  - (b) any reference in paragraph (b) or (c) of that subsection to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain;
  - (c) in paragraph (c) of that subsection—
    - (i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and
    - (ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales; and
  - (d) any reference in subsection (2) to an administrative receiver shall be taken to include a reference to any person performing, in relation to the foreign company, functions equivalent to those of an administrative receiver, within the meaning of section 251 of the 1986 Act.
- (5) Subsections (1) to (4) of section 62 above shall not have effect in relation to a protected railway company which is a foreign company.
- (6) In the application of subsection (7) of that section where the protected railway company there mentioned is a foreign company, the reference to the company's property shall be taken as a reference to such of its property as is for the time being situated in Great Britain.
- (7) In this section—
- “the 1986 Act” means the Insolvency Act 1986;
  - “foreign company” means a company incorporated outside Great Britain;
  - “the railway administration order provisions of this Act” means sections 59 to 64 above, this section and Schedules 6 and 7 to this Act.