



# Railways Act 1993

## 1993 CHAPTER 43

### PART II

#### RE-ORGANISATION OF THE RAILWAYS

##### Annotations:

##### Modifications etc. (not altering text)

- C1** Pt. II (ss. 84-116) excluded (retrospective to 5.11.1993) by 1994 c. 9, s. 252, **Sch. 24 para. 4(1)**  
Pt. II (ss. 84-116) excluded (retrospective to 11.1.1994) by 1994 c. 9, s. 252, **Sch. 24 para. 8(4)**  
Pt. II (ss. 84-116) excluded (retrospective to 5.11.1993) by 1994 c. 9, s. 252, **Sch. 24 para. 17(2)** (with s. 252(2))

#### *New companies, transfer schemes and disposals*

#### **84 Powers of the Board to form companies.**

- (1) The Board shall have power to form, or take part in forming, companies—
- (a) for the purposes of the Board's business;
  - (b) for the purpose of facilitating the disposal of—
    - (i) the whole or any part of the undertaking, or any property, rights or liabilities, of the Board or of any wholly owned subsidiary of the Board; or
    - (ii) without prejudice to the generality of sub-paragraph (i) above, any securities of any subsidiary of the Board;
  - (c) for the purpose of facilitating the performance by the Franchising Director of his functions under sections 23 to 36 above;
  - (d) for such other purposes as may be specified by the Secretary of State in a direction to the Board.

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- (2) The Secretary of State may, after consultation with the Board, direct the Board to exercise any power conferred by paragraph (a), (b), (c) or (d) of subsection (1) above; and, if he so directs, he may also give the Board directions with respect to—
- (a) the nature and objects of the company which is to be formed;
  - (b) the manner in which, and time within which, it is to be formed.
- (3) The Board shall not exercise any power conferred by subsection (1) above, except—
- (a) in the case of the power conferred by paragraph (a), with the consent of, or pursuant to a direction given under subsection (2) above by, the Secretary of State; or
  - (b) in any other case, pursuant to such a direction.
- (4) Each of the powers conferred on the Board by this section—
- (a) is in addition to, and not in derogation from, any other powers of the Board; and
  - (b) relates only to the capacity of the Board as a statutory corporation;
- and nothing in this section shall be construed as authorising the disregard by the Board of any enactment or rule of law.

## **85 Powers of the Board to make transfer schemes.**

- (1) The Board shall have power to make schemes for the transfer of the whole or any part of the undertaking, or any property, rights or liabilities, of—
- (a) the Board,
  - (b) any wholly owned subsidiary of the Board,
  - (c) any publicly owned railway company,
  - (d) the Franchising Director, or
  - (e) any company which is wholly owned by the Franchising Director,
- to any other person falling within paragraphs (a) to (e) above or to a franchise company.
- (2) In relation to the transfer or disposal (or the proposed transfer or disposal) of the whole or any part of an undertaking, any reference in this Part to property, rights or liabilities includes a reference to the undertaking or part (and, accordingly, to the property, rights and liabilities comprised in that undertaking or part).
- (3) The powers conferred on the Board by subsection (1) above shall only be exercisable—
- (a) for the purposes of the Board's business, or to facilitate a disposal in the ordinary course of that business;
  - (b) for the purpose of effecting or facilitating the disposal of such property, rights or liabilities as the Secretary of State may direct; or
  - (c) for the purpose of facilitating the performance by the Franchising Director of his functions under sections 23 to 36 above,
- and paragraph (a) above accordingly applies only in relation to transfers between the Board and any of its wholly owned subsidiaries or between two or more of its wholly owned subsidiaries.
- (4) The Secretary of State may, after consultation with the Board, direct the Board to exercise any power conferred by subsection (1) above; and, if he does so, he may also give the Board directions with respect to—

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- (a) the manner in which, and time within which, the power is to be exercised;
  - (b) the property, rights or liabilities to be transferred;
  - (c) the person to whom the transfer is to be made.
- (5) The Board shall not exercise the power conferred by subsection (1) above—
- (a) for a purpose falling within paragraph (a) of subsection (3) above, except with the consent of, or pursuant to a direction given under subsection (4) above by, the Secretary of State; or
  - (b) for a purpose specified in paragraph (b) or (c) of subsection (3) above, except pursuant to such a direction.
- (6) Subject to the following provisions of this Part, on the day on which a scheme under subsection (1) above comes into force (in this Part referred to as the “transfer date”) the property, rights and liabilities affected by the scheme shall, subject to section 97 below, be transferred and vest by virtue of, and in accordance with, the scheme.
- (7) Each of the powers conferred on the Board by this section—
- (a) is in addition to, and not in derogation from, the other powers so conferred and the other powers of the Board; and
  - (b) relates only to the capacity of the Board as a statutory corporation;
- and nothing in this section shall be construed as authorising the disregard by the Board of any enactment or rule of law.
- (8) In this Part, “franchise company” means any body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement.
- (9) Expressions used in subsection (8) above and in Part I above have the same meaning in that subsection as they have in that Part.

**Annotations:**

**Modifications etc. (not altering text)**

C2 S. 85(6) applied (11.1.1994) by 1994 c. 9, s. 252(1), Sch. 24 para. 1(1)

**86 Powers of the Franchising Director to make transfer schemes.**

- (1) The Franchising Director shall have power to make schemes for the transfer, at or after the end of the franchise period, of property, rights and liabilities which, immediately before the end of that period, are for the time being designated as franchise assets for the purposes of the franchise agreement in question to—
- (a) the Franchising Director;
  - (b) a company which is wholly owned by the Franchising Director; or
  - (c) a franchise company.
- (2) In the following provisions of this section—
- (a) the “transferor” means the person from whom any such property, rights or liabilities as are mentioned in subsection (1) above are transferred by a scheme under this section; and
  - (b) the “transferee” means the person to whom any such property, rights or liabilities are so transferred.

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- (3) Subject to any contrary agreement or arrangements which may be made between the transferor and the transferee, where any property, rights or liabilities are transferred by a scheme under this section, there shall be paid by the transferee to the transferor or, as the case may require, by the transferor to the transferee, on the day on which the scheme comes into force such sums as may be specified in, or determined in accordance with, the franchise agreement mentioned in subsection (1) above.
- (4) Subject to the following provisions of this Part, on the day on which a scheme under this section comes into force, the property, rights and liabilities affected by the scheme shall, subject to section 97 below, be transferred and vest by virtue of and in accordance with the scheme.
- (5) Except as otherwise provided by this Act—
  - (a) any reference in this Act to a “transfer scheme” shall be taken as including a reference to a scheme under this section;
  - (b) in the application of any provision of this Act in relation to a scheme under this section, any reference to the “transfer date” shall be taken as a reference to the date on which the scheme comes into force.
- (6) In this section “franchise agreement”, “franchise period” and “designated as franchise assets” have the same meaning as they have in Part I above.
- (7) Any sums required by the Franchising Director for the purpose of making payments in respect of property, rights or liabilities transferred by a scheme under this section shall be paid by the Secretary of State out of money provided by Parliament.
- (8) Any sums received by the Franchising Director in respect of property, rights or liabilities so transferred shall be paid into the Consolidated Fund.

**87      Transfer to the Secretary of State or the Franchising Director of the Board’s function of making transfer schemes.**

- (1) The Secretary of State may by order transfer any functions of the Board under section 85 above to himself or to the Franchising Director.
- (2) An order under this section may provide for the transfer of the function in question for all purposes or for such purposes as may be specified in the order.
- (3) Where any function is transferred to the Franchising Director under this section, the Secretary of State may, after consultation with the Franchising Director, direct the Franchising Director to exercise the function by making a scheme for the transfer of an undertaking or part of an undertaking, or any property, rights or liabilities, to a publicly owned railway company, a company wholly owned by the Franchising Director or a franchise company; and, if the Secretary of State gives such a direction, he may also—
  - (a) give the Franchising Director directions with respect to any matter specified in paragraph (a), (b) or (c) of section 85(4) above; or
  - (b) if the transfer is directed to be made to a publicly owned railway company which has not yet been formed, direct the Franchising Director to form, or take part in forming, a company for the purpose.
- (4) In relation to any function transferred to the Franchising Director under this section, subsection (3) above shall have effect in substitution for subsection (4) of section 85 above and any reference in this Act to a direction under the said subsection (4) shall be construed accordingly.

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- (5) An order under this section may make such modifications of this Part as may be consequential upon, or incidental or supplemental to, the transfer effected by the order.

**Annotations:**

**Commencement Information**

- II** [S. 87](#) wholly in force at 1.4.1994; [s. 87](#) not in force at Royal Assent see [s. 154\(2\)](#); [s. 87\(1\)](#) in force for specified purpose and [s. 87\(2\)\(5\)](#) wholly in force at 6.1.1994 by [S.I. 1993/3237](#), [art. 2\(2\)](#); [s. 87](#) in force at 1.4.1994 insofar as not already in force by [S.I. 1994/571](#), [art. 5](#)

**88 Transfers of interests in certain companies: provisions supplemental to sections 84 to 87.**

- (1) Where the Secretary of State gives the Board directions—
- (a) under section 84 above, with respect to the formation of a wholly owned subsidiary of the Board, and
  - (b) under section 85 above, with respect to the making of a scheme for the transfer of anything to that wholly owned subsidiary,
- the wholly owned subsidiary of the Board shall remain such until the transfer under the scheme has taken effect.
- (2) Where the Secretary of State gives the Board directions under section 85 above with respect to the making of a scheme for the transfer of anything to a company which is wholly owned by the Crown, that company shall remain wholly owned by the Crown until the transfer under the scheme has taken effect.
- (3) Where the Secretary of State gives the Franchising Director directions under or by virtue of section 87 above with respect to the making of a scheme for the transfer of anything to a publicly owned railway company, that company shall remain a publicly owned railway company until the transfer under the scheme has taken effect.
- (4) Where a wholly owned subsidiary of the Board is formed pursuant to a direction under section 84 above, none of the following persons, that is to say, the Board, any wholly owned subsidiary of the Board or any person acting on behalf of the Board or its wholly owned subsidiaries, shall dispose of any interests in that subsidiary except—
- (a) with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent; or
  - (b) pursuant to a direction of the Secretary of State under subsection (6) below or section 89 below.
- (5) None of the following persons, that is to say, the Franchising Director, any company which is wholly owned by the Franchising Director or any person acting on behalf of the Franchising Director or any such company, shall dispose of any interests in a company which is wholly owned by the Franchising Director except—
- (a) with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent; or
  - (b) pursuant to a direction of the Secretary of State under subsection (7) below.
- (6) The Secretary of State may at any time direct the Board to transfer, or arrange for there to be transferred, to him or such other person as may be specified in the direction any interests in a company so specified, being a wholly owned subsidiary of the Board

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formed pursuant to a direction under section 84 above, which are for the time being held by or on behalf of the Board.

- (7) The Secretary of State may at any time direct the Franchising Director to transfer, or arrange for there to be transferred, to the Secretary of State or such other person as may be specified in the direction any interests in any company so specified which are for the time being held by the Franchising Director, any company which is wholly owned by the Franchising Director or any person acting on behalf of the Franchising Director or any such company.
- (8) Where the Secretary of State gives a direction under subsection (6) or (7) above, it shall be the duty of the Board or, as the case may be, the Franchising Director to secure that the interests in question are transferred in accordance with the terms of the direction in such manner, and on or before such date, as may be specified for the purpose in the direction, and notwithstanding any duty imposed upon the Board by section 3(1) of the <sup>M1</sup>Transport Act 1962.

**Annotations:**

**Marginal Citations**

M1 1962 c. 46.

**89 Disposals by the Board and its subsidiaries.**

- (1) If the Secretary of State, after consultation with the Board, so directs, the Board shall dispose or secure the disposal (whether by way of sale, lease or exchange and, if by way of sale or lease, whether for nominal or valuable consideration) of—
- (a) the whole or any part of the undertaking, or any property, rights or liabilities, of the Board or of any wholly owned subsidiary of the Board; or
  - (b) without prejudice to paragraph (a) above, any securities of any subsidiary of the Board which are held by or on behalf of the Board or any other subsidiary of the Board.
- (2) The directions that may be given under this section by the Secretary of State include directions specifying—
- (a) the manner in which, and time within which, the disposal is to be effected;
  - (b) that which is to be disposed of;
  - (c) the person to whom the disposal is to be made.
- (3) No disposal shall be made by the Board, or by any subsidiary of the Board, in pursuance of a direction under this section except with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent.
- (4) The powers of disposal conferred on the Board by virtue of this section are in addition and without prejudice to those conferred by section 14(1)(e) of the <sup>M2</sup>Transport Act 1962 (power to dispose of any part of the Board's undertaking, or any property, no longer required for the purposes of the Board's business) which shall accordingly also continue to be exercisable by the Board.
- (5) In section 27 of the <sup>M3</sup>Transport Act 1962, in subsection (4) (which provides that the Secretary of State may direct the Board and the British Waterways Board to discontinue any of their activities, dispose of any part of their undertaking, dispose of

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any assets held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantees given by them) the words “dispose of any part of their undertaking, dispose of any assets held by them” shall cease to have effect in so far as relating to the Board.

**Annotations:**

**Marginal Citations**

M2 1962 c. 46.

M3 1962 c. 46.

**90 Directions to the Board about the exercise of rights conferred by holdings in companies.**

- (1) The Secretary of State may, after consultation with the Board, give directions to the Board with respect to the exercise of any rights conferred on the Board by the holding of interests in companies.
- (2) A direction under subsection (1) above may be general in character or may relate to the manner in which such rights as are mentioned in that subsection are to be exercised in a particular case.
- (3) In section 27 of the <sup>M4</sup>Transport Act 1962, in subsection (1) (which provides that the Secretary of State may give general directions to the Board as to the exercise and performance of their functions in relation to matters appearing to him to affect the national interest, including the exercise of rights conferred by the holding of interests in companies) the words “ (including the exercise of rights conferred by the holding of interests in companies) ” shall cease to have effect so far as relating to the Board.
- (4) Subsection (5) of that section (which provides that the Secretary of State may, after consultation with the Board, direct the Board to exercise control over a subsidiary of the Board so as to require the subsidiary to discontinue any of their activities, dispose of any part of their undertaking, dispose of any assets held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantees given by them) shall cease to have effect so far as relating to the Board.

**Annotations:**

**Marginal Citations**

M4 1962 c. 46.

*Transfer schemes: supplemental provision*

**91 Transfer schemes: general.**

- (1) A transfer scheme may—
  - (a) define the property, rights and liabilities to be transferred to the transferee—
    - (i) by specifying or describing the property, rights and liabilities in question;

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- (ii) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the transferor's undertaking; or
  - (iii) partly in the one way and partly in the other;
  - (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against the transferor or transferee (or both of them);
  - (c) impose on the transferor or transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, the transferor or transferee or such other person as may be specified in the scheme;
  - (d) make such supplemental, incidental, consequential or transitional provision as the maker of the scheme considers appropriate.
- (2) An obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above shall be enforceable by civil proceedings by the transferor or transferee or other person mentioned in that paragraph for an injunction or for interdict or for any other appropriate relief or remedy.
- (3) A transaction of any description which is effected in pursuance of such a provision as is mentioned in subsection (2) above—
- (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but
  - (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this subsection, have required the consent or concurrence of any other person.
- (4) No right of reverter (or corresponding right in Scotland), right of pre-emption, right of forfeiture, right of re-entry, right of irritancy, option or similar right affecting land shall operate or become exercisable as a result of any transfer of land—
- (a) by virtue of a transfer scheme;
  - (b) by or under an agreement or instrument made or executed pursuant to any provision of Schedule 8 to this Act or pursuant to any directions given, or requirement imposed, under that Schedule; or
  - (c) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above;
- and, without prejudice to paragraph 8 of Schedule 8 to this Act, any such right or option shall accordingly have effect in the case of any such transfer as if the transferee in relation to that transfer were the same person in law as the transferor and as if no transfer of the land had taken place.
- (5) Subsection (4) above shall have effect in relation to—
- (a) the grant or creation of an estate or interest in, or right over, land, or
  - (b) the doing of any other thing in relation to land,
- as it has effect in relation to a transfer of land; and any reference in that subsection or in the following provisions of this section to the transferor or the transferee shall be construed accordingly.
- (6) In any case where—
- (a) any such right or option as is mentioned in subsection (4) above would, apart from that subsection, have operated in favour of, or become exercisable by, a person, but



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- (b) the circumstances are such that, in consequence of the operation of that subsection, the right or option cannot subsequently operate in favour of that person or, as the case may be, become exercisable by him,
- such compensation as may be just shall be paid to him by the transferor or the transferee (or by both) in respect of the extinguishment of the right or option.
- (7) Any dispute as to whether any, and (if so) how much, compensation is payable under subsection (6) above, or as to the person to or by whom it shall be paid, shall be referred to and determined by—
- (a) an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors; or
  - (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session; or
  - (c) where the proceedings are to be held in Northern Ireland, an arbitrator appointed by the [<sup>F1</sup>Chairman of the Royal Institution of Chartered Surveyors in Northern Ireland] .
- (8) If it appears to the transferor that a person is or may be entitled to compensation under subsection (6) above, he shall—
- (a) notify that person that he is or may be so entitled, and
  - (b) invite him to make such representations as he wishes to the transferor not later than fourteen days after the date of issue of the document containing the notification required by paragraph (a) above,
- or, if the transferor is not aware of the name and address of the person concerned, shall publish, in such manner as he considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is or may be entitled to compensation to make such representations to the transferor within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 91(7)(c) substituted (3.4.2006 with effect as mentioned in Sch. 4 para. 361) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 383(1)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(cc)

**92 Functions under local or private legislation etc.**

- (1) A transfer scheme may provide that any functions of the transferor under a statutory provision—
- (a) shall be transferred to the transferee;
  - (b) shall be concurrently exercisable by two or more transferees; or
  - (c) shall be concurrently exercisable by the transferor and one or more transferees.
- (2) Subsection (1) above applies in relation to any function under a statutory provision if and to the extent that the statutory provision—
- (a) relates to any part of the transferor's undertaking, or to any property, which is to be transferred by the scheme; or

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- (b) authorises the carrying out of works designed to be used in connection with any such part of the transferor’s undertaking or the acquisition of land for the purpose of carrying out any such works.
- (3) Subsection (1) above does not apply to any function of the Board or of any of the Board’s subsidiaries under any provision of this Act or of—
- (a) the <sup>M5</sup>Transport Act 1962;
  - (b) the <sup>M6</sup>Transport Act 1968;
  - (c) section 4 of the <sup>M7</sup>Railways Act 1974; or
  - (d) sections 119 to 124 of the <sup>M8</sup>Transport Act 1985.
- (4) A transfer scheme may define any functions of the transferor to be transferred or made concurrently exercisable by the scheme in accordance with subsection (1) above—
- (a) by specifying the statutory provisions in question;
  - (b) by referring to all the statutory provisions (except those specified in subsection (3) above) which—
    - (i) relate to any part of the transferor’s undertaking, or to any property, which is to be transferred by the scheme, or
    - (ii) authorise the carrying out of works designed to be used in connection with any such part of the transferor’s undertaking or the acquisition of land for the purpose of carrying out any such works; or
  - (c) by referring to all the statutory provisions within paragraph (b) above, but specifying certain excepted provisions.
- (5) In this section “statutory provision” means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

**Annotations:**

**Marginal Citations**

- M5** 1962 c. 46.
- M6** 1968 c. 73.
- M7** 1974 c. 48.
- M8** 1985 c. 67.

**93 Assignment of employees to particular parts of undertakings.**

- (1) Schemes may be made—
- (a) assigning such qualifying employees, or qualifying employees of such a class or description, as may be specified in the scheme to such part of their employer’s undertaking as may be so specified;
  - (b) modifying the terms and conditions of employment of those employees; and
  - (c) providing for the payment of compensation to any of those employees by his employer in respect of any overall detriment incurred by the employee in consequence of any modifications made by the scheme to his terms and conditions of employment.
- (2) A scheme shall be made only for the purpose of facilitating, or otherwise in contemplation of, or in connection with,—

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- (a) the disposal of the undertaking, or part of the undertaking, of the Board or of a wholly owned subsidiary of the Board;
  - (b) the transfer, by virtue of a transfer scheme, of any property, rights or liabilities—
    - (i) from the Board or a wholly owned subsidiary of the Board to any such subsidiary or to a publicly owned railway company or a company wholly owned by the Franchising Director; or
    - (ii) from a company wholly owned by the Franchising Director to another such company;
  - (c) the provision of railway passenger services, or the operation of additional railway assets, under a franchise agreement, in circumstances where a previous franchise agreement relating to the provision of those services or the operation of those assets comes, or has come, to an end;
  - (d) the performance of any duty imposed on the Franchising Director by any provision of Part I above to secure—
    - (i) the provision of any railway passenger services;
    - (ii) the operation of any network or part of a network;
    - (iii) the operation of any station or light maintenance depot, or any part of a station or light maintenance depot; or
  - (e) the exercise of the power conferred on the Franchising Director by section 30 above to secure the operation of any additional railway assets.
- (3) The power to make a scheme shall be exercisable—
- (a) by the Board, in respect of employees of the Board or of any wholly owned subsidiary of the Board; or
  - (b) by the Franchising Director, in respect of employees of any company which is wholly owned by the Franchising Director.
- (4) Where a scheme modifies the terms and conditions of employment of any person, the person's terms and conditions of employment after the modification takes effect must overall, and taking account of the amount or value of any compensation payable to him by virtue of subsection (1)(c) above in respect of any such detriment as is there mentioned, be no less favourable to him than his terms and conditions of employment before the modification takes effect.
- (5) The duty imposed on an employer by section 4 of [<sup>F2</sup>the Employment Rights Act 1996] (requirement for written statement in respect of certain changes relating to an employee's employment) shall extend to all of the modifications made by a scheme to a qualifying employee's terms and conditions of employment, as if those modifications were changes required to be dealt with in a written statement under that section.
- (6) If any qualifying employee whose terms and conditions of employment are modified by a scheme is aggrieved—
- (a) at the provisions made by the scheme with respect to the payment of compensation, so far as applicable in his case, or
  - (b) at the fact that the scheme does not make any such provision,
- he may make a written complaint to the maker of the scheme not later than twelve weeks after the date of issue of the written statement required by section 4 of [<sup>F2</sup>the Employment Rights Act 1996] in consequence of the modifications made by the scheme in the qualifying employee's terms and conditions of employment.

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- (7) Any complaint under subsection (6) above shall be referred to, and determined by, such arbitrator as may be agreed by the qualifying employee and the person to whom the complaint was made or, at the request of either of them, by a panel of three arbitrators appointed by the Secretary of State and consisting of—
- (a) a person who appears to the Secretary of State to be representative of employers in the railway industry;
  - (b) a person who appears to the Secretary of State to be representative of employees in the railway industry; and
  - (c) an independent chairman.
- (8) A scheme may make such incidental, consequential, supplemental or transitional provision as appears necessary or expedient to the person making the scheme.
- (9) A scheme may make different provision for different qualifying employees or for qualifying employees of different classes or descriptions.
- (10) A scheme shall not come into force unless it has been approved by the Secretary of State or until such date as the Secretary of State may, after consultation with the maker of the scheme, specify for the purpose in giving his approval.
- (11) In the application of this section in relation to Scotland, any reference to an arbitrator shall be taken as a reference to an arbiter.
- (12) In the application of this section to Northern Ireland, for any reference to section 4 of [F2the Employment Rights Act 1996]there shall be substituted a reference to section 4(4) to (6B) of the M9Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.
- (13) In this section—
- “qualifying employee”, in the case of any scheme, means a person who, immediately before the coming into force of that scheme—
- (a) is an employee of—
    - (i) the Board;
    - (ii) a wholly owned subsidiary of the Board; or
    - (iii) a company which is wholly owned by the Franchising Director; and
  - (b) is not assigned solely to duties in that part of his employer’s undertaking to which he is, or is to be, assigned by that scheme;
- “scheme” means a scheme under this section;
- and expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

#### **Annotations:**

#### **Amendments (Textual)**

**F2** Words in s. 93(5)(6)(12) substituted (22.8.1996) by 1996 c. 18, s. 240, **Sch. 1 para. 60(2)**

#### **Commencement Information**

**I2** S. 93 wholly in force at 1.4.1994; s. 93 not in force at Royal Assent see s. 154(2); s. 93 (except subsection (3)(b)) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 93 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

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#### Marginal Citations

M9 1965 c. 19 (N.I.).

### 94 Accounting provisions.

- (1) This section applies where any property, rights or liabilities are transferred by virtue of a transfer scheme between—
  - (a) the Board and any company which, at the time of the transfer, is either—
    - (i) a wholly owned subsidiary of the Board; or
    - (ii) wholly owned by the Crown; or
  - (b) any two companies which, at the time of the transfer, fall within paragraph (a) above.
- (2) Where this section applies, the transfer scheme may state—
  - (a) the value at which any asset transferred to the transferee by virtue of the scheme is to be entered in the opening accounts of the transferee; or
  - (b) the amount at which any liability so transferred is to be entered in those accounts.
- (3) The value or amount (if any) stated by virtue of subsection (2) above shall be—
  - (a) in a case where the whole of the asset or liability in question is transferred by the transfer scheme, the value or amount at which the asset or liability appeared in the last full accounts of the transferor, or
  - (b) in a case where part only of the asset or liability is so transferred, such part of the value or amount at which the asset or liability appeared in the last full accounts of the transferor as may be determined by or in accordance with the transfer scheme,  
unless the maker of the transfer scheme considers that some other amount or value is appropriate in all the circumstances of the case, in which case the amount or value stated by virtue of subsection (2) above shall be that other amount or value.
- (4) Where this section applies, the transfer scheme may provide that the amount to be included in the opening accounts of the transferee in respect of any item shall be determined as if so much of anything done (or treated as done) by the transferor (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) as may be determined by or in accordance with the transfer scheme had been done by the transferee.
- (5) Without prejudice to the generality of the preceding provisions of this section, where this section applies, the transfer scheme may provide—
  - (a) that the amount to be included from time to time in any reserves of the transferee as representing its accumulated realised profits shall be determined as if such proportion of any profits realised and retained by the transferor as may be determined by or in accordance with the transfer scheme, had been realised and retained by the transferee;
  - (b) that the amount to be included from time to time in the opening accounts and any subsequent statutory accounts of the transferee as representing its accumulated realised losses shall be determined as if such proportion of any accumulated realised losses of the transferor as may be determined by or in accordance with the transfer scheme had been losses realised by the transferee.

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(6) In this section—

“accounting year” means—

- (a) in the case of the Board, the period of twelve months ending with 31st March in any year; and
- (b) in the case of any company, its financial year, within the meaning of [<sup>F3</sup>the Companies Act 2006];

“the last full accounts”, in connection with any transfer scheme, means—

- (a) where the Board is the transferor, the annual accounts prepared by the Board in accordance with section 24 of the <sup>M10</sup>Transport Act 1962 for the accounting year last ended before the making of the transfer scheme; and
- (b) where any other person is the transferor, the statutory accounts of that person for the accounting year last ended before the making of the transfer scheme;

“the opening accounts of the transferee” means any statutory accounts prepared by the transferee for the accounting year next ending after the transfer date;

“statutory accounts” means any accounts prepared by a company for the purpose of any provision of [<sup>F4</sup>the Companies Act 2006] (including group accounts).

**Annotations:**

**Amendments (Textual)**

- F3** Words in s. 94(6) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 193\(a\)\(i\)](#) (with arts. 6, 11, 12)
- F4** Words in s. 94(6) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 193\(a\)\(ii\)](#) (with arts. 6, 11, 12)

**Marginal Citations**

- M10** 1962 c. 46.

**95 Power of the Secretary of State or the Franchising Director to require provision of information in connection with transfer schemes.**

(1) Where, in exercise of any functions conferred on him by section 86 above or transferred to him by an order under section 87 above, the Franchising Director or the Secretary of State (in this section referred to as “the relevant authority”) proposes to make a transfer scheme, he may direct any person to whom this section applies—

- (a) to furnish him with such information as the relevant authority considers necessary to enable him to make the scheme; and
- (b) to do so within such time (being not less than 28 days from the giving of the direction) as may be specified in the direction;

and the persons to whom this section applies are [<sup>F5</sup>the Office of Rail and Road], the Board, any wholly owned subsidiary of the Board, any publicly owned railway company, any franchise company and any company which is wholly owned by the Franchising Director.

(2) If a person fails to comply with a direction under subsection (1) above, the relevant authority may serve a notice under subsection (3) below on that person.

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- (3) A notice under this subsection is a notice signed by the relevant authority and—
- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the relevant authority or to any person appointed by the relevant authority for the purpose, any documents which are specified or described in the notice and are in that person’s custody or under his control; or
  - (b) requiring that person to furnish, at a time and place and in the form and manner specified in the notice, to the relevant authority such information as may be specified or described in the notice.
- (4) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (5) A person who without reasonable excuse fails to do anything required of him by notice under subsection (3) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (3) above to produce is guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (7) If a person makes default in complying with a notice under subsection (3) above, the court may, on the application of the relevant authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (8) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (9) In this section “the court” means the High Court, in relation to England and Wales, and the Court of Session, in relation to Scotland.

**Annotations:**

**Amendments (Textual)**

- F5** Words in s. 95(1) substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 1(yy)**

**96 Functions of the Secretary of State in relation to transfer schemes.**

- (1) A transfer scheme made by the Board or the Franchising Director, otherwise than under section 86 above, shall not come into force unless it has been approved by the Secretary of State or until such date as the Secretary of State may specify for the purpose in giving his approval.

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- (2) The Secretary of State shall not make a transfer scheme except after consultation with the transferor.
- (3) Before approving a transfer scheme made by the Franchising Director or the Board, the Secretary of State, after consultation with the transferor and, in the case of a scheme made by the Franchising Director, with the Franchising Director, may modify the scheme.
- (4) It shall be the duty of the transferor to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on him by this section.

#### **97 Supplementary provisions as to transfers by transfer scheme.**

The provisions of Schedule 8 to this Act shall apply to any transfer by virtue of a transfer scheme; and sections 85(6) and 86(4) above shall have effect subject to the provisions of that Schedule.

#### *Ownership of successor companies*

#### **98 Initial share holding in successor companies.**

- (1) This section applies where any property, rights or liabilities are vested in accordance with a transfer scheme in a successor company which at the time of the vesting is either—
  - (a) a wholly owned subsidiary of the Board; or
  - (b) Government owned.
- (2) Where this section applies, the successor company shall, as a consequence of the vesting referred to in subsection (1) above, issue to the appropriate person such securities of that company as may from time to time be directed—
  - (a) by the Secretary of State, if the transfer scheme was made in pursuance of a direction given by him; or
  - (b) in any other case, by the Board with the consent of the Secretary of State.
- (3) The “appropriate person” for the purposes of subsection (2) above is—
  - (a) the Board, in a case where the direction under that subsection is given at a time when the successor company is a wholly owned subsidiary of the Board; or
  - (b) the Secretary of State, in a case where the direction under that subsection is given at a time when the successor company is Government owned.
- (4) No direction shall be given under subsection (2) above to the successor company at any time after that company—
  - (a) has ceased to be Government owned, or
  - (b) has ceased to be a wholly owned subsidiary of the Board,
 unless, in a case where paragraph (b) above would otherwise apply, the cessation mentioned in that paragraph occurs in consequence of the successor company’s becoming Government owned pursuant to a direction under section 88(6) above, in which case directions under subsection (2) above may continue to be given until the company ceases to be Government owned.



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- (5) Securities required to be issued in pursuance of a direction under subsection (2) above shall be issued or allotted at such time or times, and on such terms, as may be specified in the direction.
- (6) Shares of the successor company which are issued in pursuance of a direction under subsection (2) above—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the <sup>M11</sup>Companies Act 1985 as if they had been paid up by virtue of the payment to that company of their nominal value in cash.
- (7) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities acquired by virtue of this section shall be paid into the Consolidated Fund.
- (8) In this section, “Government owned”, in relation to any successor company, means wholly owned by the Crown, but not wholly owned by the Franchising Director.

**Annotations:**

**Marginal Citations**

M11 1985 c. 6.

**99 Government investment in securities of successor companies.**

- (1) The Treasury or, with the approval of the Treasury, the Secretary of State may at any time acquire securities of a successor company which at that time is—
  - (a) a wholly owned subsidiary of the Board; or
  - (b) wholly owned by the Crown.
- (2) The Secretary of State shall not dispose of any securities acquired under this section without the approval of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities acquired under this section shall be paid into the Consolidated Fund.

**100 Exercise of functions through nominees.**

- (1) The Treasury or, with the approval of the Treasury, the Secretary of State may, for the purposes of section 98 or 99 above or section 106 below, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—
  - (a) securities of a successor company may be issued under section 98 above or section 106 below to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section, and
  - (b) any such nominee appointed for the purposes of section 99 above may acquire securities under that section,

in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.

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- (2) Any person holding any securities as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

**101 Target investment limit for Government shareholding in certain successor companies.**

- (1) As soon as he considers expedient and, in any case, not later than six months after any operating company ceases to be a public sector railway company, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Treasury and their nominees and by the Secretary of State and his nominees (in this section referred to as “the Government shareholding”).
- (2) The target investment limit for the Government shareholding in an operating company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (in this section referred to as “the ordinary voting rights”).
- (3) The first target investment limit fixed under this section for the Government shareholding in a particular company shall not exceed, by more than 0.5 per cent. of the ordinary voting rights, the proportion of those rights which is in fact carried by the Government shareholding in that company at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in an operating company in place of the one previously in force under this section; but—
- (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of the Treasury and of the Secretary of State so to exercise—
- (a) their powers under section 99 above and any power to dispose of any shares held by virtue of any provision of this Part, and
  - (b) their power to give directions to their respective nominees,
- as to secure in relation to each operating company that the Government shareholding in that company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section in relation to that company.
- (6) Notwithstanding subsection (5) above but subject to subsection (7) below, the Treasury or the Secretary of State may take up, or direct any nominee of the Treasury or of the Secretary of State to take up, any rights which are for the time being available to them or him, or to the nominee, either—
- (a) as an existing holder of shares or other securities of an operating company; or
  - (b) by reason of the rescission of any contracts for the sale of such shares or securities.
- (7) If, as a result of anything done under subsection (6) above, the proportion of the ordinary voting rights carried by the Government shareholding in an operating company at any time exceeds the target investment limit for the time being in force under this section in relation to that company, it shall be the duty of the Treasury or, as

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the case may be, the Secretary of State to comply with subsection (5) above as soon after that time as is reasonably practicable.

- (8) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (9) The Secretary of State shall not exercise any power conferred on him by this section except with the consent of the Treasury.

(10) In this section—

“operating company” means a successor company—

- (a) which is a company limited by shares and formed and registered under the <sup>M12</sup>Companies Act 1985 (or the former Companies Acts, as defined in section 735(1)(c) of that Act);
- (b) which was a public sector railway company at the time when any property, rights or liabilities of another public sector railway company were vested in it by a transfer scheme;
- (c) which has since ceased to be a public sector railway company; and
- (d) which at the time of the vesting referred to in paragraph (b) above was not, and at no time since has been, a franchise company;

“public sector railway company” means—

- (a) the Board;
- (b) any wholly owned subsidiary of the Board; or
- (c) any publicly owned railway company.

**Annotations:**

**Marginal Citations**

M12 1985 c. 6.

*Finances of successor companies*

**102 Temporary restrictions on borrowings etc.**

- (1) If articles of association of a successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section an alteration of the articles of association of a successor company shall be disregarded if the alteration—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and
- (b) is made at a time when that company is neither a wholly owned subsidiary of the Board nor wholly owned by the Crown.
- (3) In this section “group”, in relation to a company, means that company and all of its subsidiaries taken together.

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### **103 Government lending to certain successor companies.**

- (1) The Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to any successor company which is for the time being wholly owned by the Crown.
- (2) Any loans which the Secretary of State makes under this section shall be repaid to him at such times and by such methods, and interest on any such loans shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.
- (3) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this section.
- (4) Any sums received under subsection (2) above by the Secretary of State shall be paid into the National Loans Fund.
- (5) It shall be the duty of the Secretary of State as respects each financial year—
  - (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of subsection (3) above and of sums received by him under subsection (2) above and of the disposal by him of the sums so issued or received; and
  - (b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;
 and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

### **104 Treasury guarantees for loans made to certain successor companies.**

- (1) The Treasury may guarantee, in such manner and on such terms as they 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 sums which are borrowed from a person other than the Secretary of State by any successor company which is for the time being wholly owned by the Crown.
- (2) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.
- (3) Any sums required by the Treasury for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.
- (4) If any sums are issued in fulfilment of a guarantee given under this section, the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
  - (a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and
  - (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.
- (5) Any sums received under subsection (4) above by the Treasury shall be paid into the Consolidated Fund.

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### **105 Grants to certain successor companies.**

- (1) The Secretary of State may, with the approval of the Treasury, make to any successor company which is for the time being wholly owned by the Crown grants of such amounts, at such times and in such manner, as he may with the approval of the Treasury determine, towards the expenditure of that company.
- (2) Grants under this section may be made subject to such conditions as the Secretary of State with the approval of the Treasury may determine.
- (3) Any sums required by the Secretary of State for making grants under this section shall be paid out of money provided by Parliament.

### **106 Extinguishment of certain liabilities of successor companies.**

- (1) The Secretary of State may by order extinguish all or any of the liabilities of a successor company which is for the time being—
  - (a) a wholly owned subsidiary of the Board, or
  - (b) wholly owned by the Crown,in respect of the principal of such relevant loans as may be specified in the order; and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.
- (2) Where the Secretary of State has made an order under subsection (1) above and he considers it appropriate to do so, he may from time to time give a direction under this subsection to the company whose liabilities are extinguished by the order, or to a company or companies wholly owning the company whose liabilities are so extinguished; and a company to which such a direction is given shall, as a consequence of the making of the order, issue such securities of the company as may be specified or described in the direction—
  - (a) to the Treasury or the Secretary of State; or
  - (b) if it is the company whose liabilities are extinguished by the order, to a company or companies wholly owning that company.
- (3) For the purposes of any statutory accounts of a company to whom securities are issued by virtue of subsection (2)(b) above, the value at the time of its issue of any such security shall be taken—
  - (a) in the case of a share, to have been equal to its nominal value; and
  - (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.
- (4) In subsection (3) above “statutory accounts of a company” means any accounts prepared by the company for the purpose of any provision of [F6the Companies Act 2006] (including group accounts).
- (5) The Secretary of State—
  - (a) shall not give a direction under subsection (2) above for the issue of securities except at a time when the company whose liability is extinguished by the order or, as the case may be, the company which is directed to issue securities satisfies the condition in subsection (6) below; and

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- (b) shall not give a direction under paragraph (b) of subsection (2) above except at a time when the company, or each of the companies, to whom the securities are to be issued satisfies that condition.
- (6) The condition referred to in subsection (5) above is that the company is for the time being—
- (a) a wholly owned subsidiary of the Board; or
  - (b) wholly owned by the Crown.
- (7) Unless the Secretary of State otherwise determines in any particular case, where a company is directed to issue debentures in pursuance of this section—
- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
  - (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest on those principal sums, shall be the same as the corresponding terms of the loans specified in the order.
- (8) For the purposes of subsection (7) above, any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.
- (9) Subsections (5) to (7) of section 98 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (10) The Secretary of State shall not exercise any power conferred on him by this section except with the consent of the Treasury.
- (11) In this section “relevant loan”, in relation to a successor company, means any loan made to the Board under section 20 of the <sup>M13</sup>Transport Act 1962, if and to the extent that the liability to repay that loan is transferred to and vested in that company by virtue of a transfer scheme.
- (12) For the purposes of this section the company or companies wholly owning another company are—
- (a) any company of which that other is a wholly owned subsidiary, or
  - (b) any two or more companies which between them hold all the issued securities of that other.

**Annotations:**

**Amendments (Textual)**

- F6** Words in s. 106(4) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 193\(b\)](#) (with arts. 6, 11, 12)

**Marginal Citations**

- M13** 1962 c. 46.

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*Provisions with respect to flotation*

**107 Responsibility for composite listing particulars of certain licensed successor companies.**

- (1) In any case where—
- (a) the same document contains listing particulars for securities of two or more licensed successor companies, and
  - (b) any person’s responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,
- that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.
- (2) Sections 150 and 154 of the 1986 Act (advertisements etc in connection with listing applications) shall have effect in relation to any information issued for purposes connected with any securities of a licensed successor company as if any reference to a person’s incurring civil liability included a reference to any other person being entitled, as against that person, to be granted a civil remedy or to rescind or repudiate any contract.
- (3) Subsections (1) and (2) above have effect only in relation to licensed successor companies—
- (a) which are wholly owned subsidiaries of the Board; or
  - (b) which are wholly owned by the Crown.
- (4) In this section—
- “the 1986 Act” means the <sup>M14</sup>Financial Services Act 1986;
  - “licensed successor company” means a successor company which is the holder of a licence under section 8 above;
  - “listing particulars” means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;
  - “responsible” means responsible for the purposes of Part IV of the 1986 Act and “responsibility” shall be construed accordingly.

**Annotations:**

**Marginal Citations**

**M14** 1986 c. 60.

**108 Application of Trustee Investments Act 1961 in relation to investment in certain licensed successor companies.**

- (1) Subsection (2) below shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the <sup>M15</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment, during the first investment year or any following year, in shares or debentures of a licensed successor company—

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- (a) whose shares or debentures are included in the Official List, within the meaning of Part IV of the <sup>M16</sup>Financial Services Act 1986, in pursuance of that Part; and
  - (b) which, immediately before its shares or debentures were admitted to that Official List, was—
    - (i) a wholly owned subsidiary of the Board; or
    - (ii) a company wholly owned by the Crown.
- (2) The licensed successor company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—
- (a) in every year preceding the first investment year which is included in the relevant five years; and
  - (b) in the first investment year, if that year is included in the relevant five years and that company does not in fact pay such a dividend in that year.
- (3) In this section—
- “the first investment year”, in relation to a licensed successor company means the calendar year in which shares in that company are first issued in pursuance of section 98(2) above;
  - “licensed successor company” has the same meaning as it has in section 107 above;
  - “the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

**Annotations:**

**Marginal Citations**

**M15** 1961 c. 62.

**M16** 1986 c. 60.

*Other financial provisions*

**109 Grants to the Board.**

After section 21 of the <sup>M17</sup>Transport Act 1962 (Treasury guarantees) there shall be inserted—

**“21A Grants to the Railways Board.**

- (1) The Secretary of State may, with the approval of the Treasury, make to the Railways Board grants of such amounts, at such times and in such manner, as he may with the approval of the Treasury determine—
  - (a) towards the expenditure of that Board; or
  - (b) without prejudice to paragraph (a) of this subsection, for the purpose of enabling that Board to make any payment (whether by way of repayment of principal or payment of interest or of any other description) in respect of any loan made to them under section twenty of this Act.



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- (2) Grants under this section may be made subject to such conditions as the Secretary of State may with the approval of the Treasury determine.
- (3) Any sums required by the Secretary of State for making grants under this section shall be paid out of money provided by Parliament.
- (4) This section is without prejudice to any other power to make grants to the Railways Board.”.

**Annotations:**

**Marginal Citations**

M17 1962 c. 46.

**110 Application of sections 19 to 21A of the Transport Act 1962 to wholly owned subsidiaries of the Board.**

- (1) If the Secretary of State by order so provides, sections 19 to 21A of the <sup>M18</sup>Transport Act 1962 (which, among other things, make provision for and in connection with—
  - (a) the borrowing powers of the Board,
  - (b) the making by the Secretary of State of loans to the Board,
  - (c) the giving by the Treasury of guarantees in respect of sums borrowed by the Board from persons other than the Secretary of State, and
  - (d) the making by the Secretary of State of grants to the Board),shall apply in relation to any wholly owned subsidiary of the Board designated in the order as they apply in relation to the Board, but with such modifications as may be specified in the order.
- (2) Without prejudice to the generality of the modifications of those sections that may be specified in an order under this section, any such order may include provision imposing limits on the amounts that may be outstanding at any time in respect of the principal of any money borrowed by wholly owned subsidiaries of the Board under section 19 of the <sup>M19</sup>Transport Act 1962 in its application by virtue of this section.

**Annotations:**

**Marginal Citations**

M18 1962 c. 46.

M19 1962 c. 46.

**111 Financial limits on loans.**

In section 42 of the <sup>M20</sup>Transport Act 1968, in subsection (6) (limit on aggregate amount outstanding in respect of the principal of any money borrowed by the Board under section 19 of the <sup>M21</sup>Transport Act 1962 and the Board’s commencing capital debt), paragraph (b) (which relates to the Board’s commencing capital debt, and which is spent) shall be omitted and after that paragraph there shall be inserted—

“(c) the principal of any money borrowed by wholly owned subsidiaries of the Board under that section in its application by virtue of section 110 of the Railways Act 1993,”.

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**Annotations:**

**Marginal Citations**

- M20** 1968 c. 73.  
**M21** 1962 c. 46.

*Stamp duty and stamp duty reserve tax*

**112 Stamp duty and stamp duty reserve tax.**

Schedule 9 to this Act (which makes provision about stamp duty and stamp duty reserve tax in relation to or in connection with the other provisions of this Part) shall have effect.

*Supplemental*

<sup>F7</sup>**113** .....

**Annotations:**

**Amendments (Textual)**

- F7** S. 113 repealed (15.1.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2000/3376, **art. 2**

**114 The Secretary of State, the Franchising Director and the Board not to be regarded as shadow directors of certain railway companies etc.**

(1) None of the following persons, that is to say—

- (a) the Secretary of State,
- (b) the Franchising Director,
- (c) the Board,

shall be regarded for any purpose of [<sup>F8</sup>the Companies Acts (as defined in section 2(1) of the Companies Act 2006)] as a shadow director, within the meaning of [<sup>F9</sup>those Acts (see section 251 of that Act)], of any body falling within subsection (2) below.

(2) Those bodies are—

- (a) any publicly owned railway company;
- (b) any company which is wholly owned by the Franchising Director;
- (c) any subsidiary of the Board;
- (d) any franchise company;
- (e) any company concerning which a direction (whether of a general or specific character) has been given under section 90 above to the Board with respect to the exercise by the Board of the rights conferred by their holding of interests in that company.

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**Annotations:**

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**Amendments (Textual)**

- F8** Words in s. 114(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 143\(5\)\(a\)](#) (with art. 10)
- F9** Words in s. 114(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 143\(5\)\(b\)](#) (with art. 10)

**115 Parliamentary disqualification.**

In Part III of Schedule 1 to the <sup>M22</sup>House of Commons Disqualification Act 1975, the following entry shall be inserted at the appropriate place—

“Director of a company—

- (a) which, within the meaning of Part II of the Railways Act 1993, is a successor company wholly owned by the Crown, or
- (b) which, within the meaning of that Act, is wholly owned by the Director of Passenger Rail Franchising,

being a director nominated or appointed by a Minister of the Crown, the Director of Passenger Rail Franchising or any other person acting on behalf of the Crown ”.

**Annotations:**

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**Marginal Citations**

**M22** 1975 c. 24.

**116 Interpretation of Part II.**

(1) In this Part, unless the context otherwise requires—

“dispose”, in relation to any land, includes the making of any disposition and “disposal” shall be construed accordingly;

“franchise company” has the meaning given by section 85(8) above;

“property”, “rights” and “liabilities” shall be construed in accordance with section 85(2) above and subsection (2) below;

“successor company” means a company in which any property, rights or liabilities are vested by virtue of and in accordance with a transfer scheme;

“transfer date” has the meaning given by section 85(6) or, as the case may be, 86(5)(b) above;

“transferee” and “transferor”, in relation to any transfer of property, rights or liabilities effected or proposed to be effected by virtue of a transfer scheme, mean respectively the person to whom and the person from whom they are, or are to be, so transferred.

(2) Any reference in this Part to property, rights or liabilities is a reference to property or (as the case may be) rights or liabilities—

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- (a) whether or not capable of being transferred or assigned otherwise than under or by virtue of this Act;
  - (b) whether situate or subsisting in the United Kingdom or elsewhere; and
  - (c) whether the person entitled to the property or rights or, as the case may be, subject to the liabilities is so entitled or subject—
    - (i) under the law of the United Kingdom or of any part of the United Kingdom; or
    - (ii) under the law of any country or territory outside the United Kingdom;
- and references to an undertaking or part of an undertaking shall be construed accordingly.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 145(2)(gc) inserted by [S.I. 2015/786 reg. 7\(3\)](#)