

## SCHEDULES

### SCHEDULE 4

Sections 17 and 19.

#### ACCESS AGREEMENTS: APPLICATIONS FOR ACCESS CONTRACTS

##### *Interpretation*

1 In this Schedule—

“application for directions” means an application for directions under section 17 of this Act;

“the facility owner” means the facility owner mentioned in section 17(1) of this Act;

“interested person” means any person whose consent is required by the facility owner, as a result of an obligation or duty owed by the facility owner which arose after the coming into force of section 17 of this Act, before the facility owner may enter into the required access contract;

“the required access contract” means the access contract which the applicant seeks to obtain by virtue of the application for directions;

and, subject to that, expressions used in this Schedule and in section 17 of this Act have the same meaning in this Schedule as they have in that section.

##### *Making and withdrawal of application*

2 (1) Any application for directions must be made in writing to the Regulator and must—

- (a) contain particulars of the required rights;
- (b) specify the terms which the applicant proposes should be contained in the required access contract; and
- (c) include any representations which the applicant wishes to make with regard to the required rights or the terms to be contained in the required access contract.

(2) The applicant may, by giving notice in writing to the Regulator, withdraw or suspend the application at any time.

(3) In this paragraph “the required rights” means the permission to use the railway facility in question which it is sought to obtain by virtue of the application for directions.

##### *Notifications, representations and information*

3 (1) The Regulator shall—

- (a) send a copy of any application for directions received by him to the facility owner; and
- (b) invite the facility owner to make written representations to the Regulator within such period (being not less than 21 days from the date of issue of the invitation) as may be specified in the invitation.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The Regulator shall send a copy of any such representations received by him to the applicant and invite him to make further written representations within such period (being not less than 10 days from the date of issue of the invitation) as may be specified in the invitation.
- (3) The Regulator may from time to time request or invite further information, clarification or representations from the applicant or the facility owner.

#### *Interested persons*

- 4 (1) Where the Regulator receives an application for directions, he shall issue a direction to the facility owner requiring him to furnish the name and address of every interested person to the Regulator within such period (being not less than 14 days from the date of issue of that direction) as may be specified in that direction.
- (2) Where the name and address of an interested person is furnished pursuant to sub-paragraph (1) above, the Regulator shall invite the interested person to make written representations to him within such period (being not less than 14 days from the date of issue of the invitation) as may be specified in the invitation.
- (3) The Regulator shall send a copy of any such representations received by him to the applicant and to the facility owner and invite each of them to make written representations within such period (being not less than 10 days from the date of issue of the invitation) as may be specified in the invitation.
- (4) The Regulator may from time to time request or invite further information, clarification or representations from any interested person.

#### *The decision and the directions*

- 5 (1) The Regulator shall inform the applicant, the facility owner and any interested person of his decision on an application for directions.
- (2) If the Regulator decides to give directions to the facility owner requiring him to enter into an access contract—
  - (a) the directions shall specify—
    - (i) the terms of the access contract; and
    - (ii) the date by which the access contract is to be entered into; and
  - (b) the Regulator may also give directions to the applicant or the facility owner requiring him to pay compensation of such amount as may be specified in the directions to such interested person as may be so specified.
- (3) Any compensation directed to be paid by virtue of sub-paragraph (2)(b) above shall be recoverable as a debt due.
- (4) The facility owner shall be released from his duty to comply with the directions if the applicant fails to enter into an access contract on the terms required by the directions by the date specified for that purpose in the directions.

#### *Effect of directions on facility owner and interested persons*

- 6 (1) Any directions given on an application for directions or under this Schedule shall be binding on the person to whom they are given, notwithstanding any obligation or

duty he may owe to an interested person and whether or not the interested person has had an opportunity to make representations.

- (2) No interested person, and no successor to an interested person, shall take any step for the purpose of enforcing or exercising any right he may have against the facility owner in respect of, or in consequence of, the facility owner's—
- (a) entering into an access contract pursuant to directions under section 17 of this Act,
  - (b) performing such a contract in accordance with its terms, or
  - (c) failing to take any step to protect the interests of the interested person in connection with the application for directions, or the making of the access contract,

whether or not the interested person had, or has had, an opportunity to make representations.

- (3) The duty of the facility owner to furnish the Regulator with the name and address of every interested person pursuant to a direction under paragraph 4 above is a duty owed to each interested person and (subject to the defences and incidents applying in actions for breach of statutory duty) any contravention of that duty shall be actionable at the suit or instance of the interested person and the facility owner shall be liable for any loss or damage suffered by the interested person as a result of any access contract which is entered into in consequence of the application for directions.
- (4) It shall be a defence in any proceedings brought by virtue of sub-paragraph (3) above for the facility owner to show that he took all reasonable steps, and exercised all due diligence, to avoid contravening the duty in question.
- (5) In this paragraph “successor”, in relation to an interested person, means any person—
- (a) who is a successor in title to the interested person; or
  - (b) whose rights derive directly or indirectly from the interested person.

#### *Financial provision*

- 7 (1) Any sums required by the Franchising Director for the payment of compensation pursuant to directions under this Schedule shall be paid by the Secretary of State out of money provided by Parliament.
- (2) Any sums received by the Franchising Director under this Schedule shall be paid into the Consolidated Fund.